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PRECEDENTS IN CONVEYANCING.

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KEY AND ELPHINSTONE'S
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PRECEDENTS
IN
CONVEYANCING

SIXTH EDITION.

BY

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ADDENDA TO VOL. II.

Page 12 Marginal note to Clause IX. *should be* "To pay principal and interest on demand."

,, 50 Note (*a*), line 3. *After* "able" *insert* "by threatening to apply for an injunction against registration."

,, 69 Line 11. *After* "XXXVI." *insert* "]" *and dele* "[" *in line* 12.

,, 79 Note (*d*), line 9. *Dele* "Notwithstanding the provisions of L. T. A. 1875, s. 83; L. T. A. 1897, sched.," *and begin the paragraph* "Probably" *&c.*

,, 112 Line 4 from bottom of note. "*Re Onslow*, 39 Ch. 622" *should be* "39 Ch. D. 622."

,, 243 Line 9 from bottom of note. "1882" *should be* "1881."

MORTGAGES (*a*).

RECITALS (*b*).

I. AND WHAS the sd, *mtgee,* has agrd with the sd, *mtgor,* to lend him the sum of £——, upon havg the repaymt thof, with intt at the rate hinafter mentd, secd in mner hinafter

Agreement for loan by one.

(*a*) As to mortgages, see Elph. Introd., chaps. 6, 7, and 8.

Charges on registered land.

A registered proprietor of freehold or leasehold land may in the prescribed manner (L. T. A. 1875, s. 22 *et seq.*, L. T. R. 106 *et seq.*) charge the land with the payment at the appointed time of principal with or without interest, and with or without power of sale: the person in whose favour the charge is made is to be registered as proprietor of the charge, and a certificate of charge must either be delivered to him or deposited in the registry, L. T. A., 1897, s. 8; and must be produced if outstanding to the registrar on every dealing with the charge, L. T. A., 1897, s. 8 (1). The proprietor of the charge is not entitled in the absence of special stipulation to the custody of the land certificate, L. T. A., 1897, s. 8 (4). In the absence of special stipulation covenants are implied by the person creating the charge to pay the principal and interest, if any, on the appointed day, and to pay interest after default at the appointed rate, L. T. A., 1875, s. 23; and if the land is leasehold, to pay the rent, to perform and observe the lessee's covenants and conditions, and to indemnify the proprietor of the charge against them, L. T. A., 1875, s. 24. Subject to an entry to the contrary on the register, the registered proprietor of the charge may enter into possession of the land subject to the rights of prior registered incumbrancers, and to the liabilities of a mortgagee in possession, L. T. A., 1875, s. 25; and may enforce foreclosure or sale in the same manner as if he had been a mortgagee, L. T. A., 1875, s. 26: see L. T. R. 110; and may sell the land in the same manner as if he had been registered proprietor of the land, L. T. A., 1875, s. 27; and registered charges are to have priority according to priority of registration, L. T. A., 1875, s. 28. See as to the manner of reserving the priority of a charge not actually made, which ought when made to have priority over a registered charge, L. T. R. 117; and as to a registered charge alleged to have priority by statute over existing registered charges, L. T. R. 118, 119.

The provisions of ss. 19, 20, 21 (except sub-ss. 1 and 4), 22, 23, and 24 of the

(*b*) See also the forms of recitals under the head CONVEYANCES ON SALE, Vol. I., p. 356 *et seq.*, most of which are applicable also to mortgages and other assurances. Recitals in mortgages can generally in simple cases be omitted altogether.

a

appearg, *for regrd land add* " & by a regrd chge on [transfer of] the land regrd under the district of —— & parish of —— under the title No. ——."

C. A. 1881, apply to registered charges, L. T. A., 1897, s. 9 (2); and a transfer of land made by the proprietor of a registered charge operates as a conveyance in professed exercise of the powers of sale conferred by the C. A., 1881, L. T. A., 1897, s. 9 (1); for form of transfer, see form XXIX. in sched. to L. T. R. As to charges of annuities, see L. T. A., 1897, s. 9 (3); L. T. R. 108. The terms of a charge can be altered on the application, or with the consent, of the registered proprietor of the land, and of all registered charges of equal or inferior priority, L. T. A., 1897, s. 9 (5); see L. T. R. 111.

Incumbrances prior to registration.

Incumbrances prior to first registration may on proof of title of the incumbrancer and notice to the registered proprietor of the land, be registered, but where there are more of such incumbrances than one, their relative priorities are not to be affected by the registration of some only or by the order of registration. After registration the same forms must be used and proceedings adopted as to transfer, and other dispositions of the incumbrance so registered as are required in the case of registered charges, L. T. R. 121 to 123.

Sub-charges.

Charges on registered charges or incumbrances are called sub-charges, and can be made, completed, transferred and discharged, imply the same covenants, and confer the same powers as a charge, L. T. R. 124 to 126.

Discharge of registered charge.

Where a charge is wholly or partially discharged, an entry to that effect is to be made on the register, L. T. A., 1875, s. 28; L. T. A., 1897, Sch.; L. T. R. 112. As to the discharge of a charge in favour of a Building Society, Friendly Society, or Industrial and Provident Society, see L. T. R. 113.

Title of proprietor of registered charge.

It will be observed that though a transfer of land for valuable consideration confers an estate in fee simple on the transferee, subject to the incumbrances if any entered on the register, and to the rights, &c., which by the Act of 1875 are declared not to be incumbrances, subject also in the case of land registered with qualified title or possessory title, to the rights, &c., excepted from registration, " but free from all other estates and interests whatsoever" (L. T. A., 1875, ss. 30 to 32), the Act contains no statement as to what title the proprietor of a registered charge is to take.

In all cases the person about to advance money on the security of a registered charge on registered land, must make the same investigation, if any, of the title as he would if he were taking a transfer of land, Vol. I., pp. 232 *et seq.* But the question arises, ought he not also to ascertain that the registered proprietor of the land has in equity power to create the charge. Probably the person taking a registered charge is not concerned to enquire about, and is not affected by express notice of, equities (L. T. A., 1875, s. 83 (1); L. T. A., 1897, Sch.), but the question remains, is he affected by *legal* unregistered rights?

These rights may be divided into three classes, first, where they arise under unregistered assurances made after the first registration of a proprietor of the land. In this case, unless they are protected in the manner provided by L. T. A., 1875, s. 49, the registered proprietor of the land can make a registered charge overriding the unregistered assurances other than leases for terms not exceeding twenty-one years, where there is an occupation under the tenancy (L. T. A., 1875, s. 18 (7)). If the unregistered assurance is a lease protected by notice, it will prevail over a subsequent registered charge (L. T. A., 1875, s. 50); if the unregistered assurance is protected by a caution, the notice must be given to the cautioner

II. AND WHAS the sd, *mtgees*, have agrd with the sd, *mtgor*, to lend him the sum of £—— out of moys belongg to them

The same by several on joint account.

(L. T. A., 1875, s. 54); and at the expiration of the notice the charge may be registered, and will have priority over the unregistered assurance. If the unregistered assurance is protected by a restriction requiring the consent of some person to the creation of a charge, the charge cannot be created unless such consent is given; and if it be protected by an inhibition, the charge cannot be made if the inhibition prevents it from being made (L. T. A., 1875, s. 57).

The second class of legal unregistered rights is where some consent is required by statute to the registered proprietor making a charge. In this case it will not be safe to take a registered charge without the prescribed consent, though possibly it may be argued that where the statute requiring the consent is prior to the L. T. A., 1875, it is *pro tanto* repealed.

The third class of legal unregistered rights are those which have priority by virtue of a statute, including those existing at first registration whose priority is preserved by the L. T. A., 1875. Land charges as defined by the L. T. R. 1 (3), only have priority from the date of registration (L. T. R. 116); other charges alleged to have priority by virtue of a statute may be registered with an entry of the claim to priority, and if necessary such claim may be determined by the Registrar or the Court (L. T. R. 118, 119).

Caution to be put on register.

At the time of searching the register, the person intending to advance the money should have a caution in his name put on the register so as to prevent any entry being made without his knowledge. On completion, the certificate of charge will be handed to him, or deposited in the Registry. Possibly it may become the practice to have the charge entered on the register before payment of the money; the if proprietor of the land retains the certificate of charge till payment, he will be reasonably safe.

Stipulations not capable of registration.

If on the treaty for the advance, stipulations are agreed upon which cannot be entered in the register, it will be necessary to have an unregistered assurance, which may conveniently be a mortgage in the same form as if the land was unregistered, and in addition to take a registered charge, or a registered transfer to the mortgagee; in the latter case it will be proper to protect the mortgagor by a caution.

Variations for several mortgagees or mortgagors.

The following forms of recitals and clauses in mortgages are for the most part, for simplicity and to avoid repetition applicable only to one mortgagor and one mortgagee. The variations required for several mortgagees would be little if anything more than the mere substitution of the plural for the singular, except where otherwise indicated. The variations for several mortgagors would generally be too special and dependent on the particular circumstances to be given except in the complete precedents.

Stamp.

As to the stamps on mortgages, see the Stamp Act, 1891, Sched., tit. MORTGAGE, &c.; and as to mortgages of life policies, see s. 118.

Protection of mortgagees of unregistered land.

If the owner of an equity of redemption registers himself as proprietor, great inconvenience may arise on a sale by the mortgagee. He appears to be bound to procure the registration of himself as proprietor, or to procure a transfer from the registered proprietor to the purchaser. The question whether it is possible for the mortgagee to be registered as proprietor of the land when another person is already registered, is one of considerable difficulty, which cannot be discussed here. If the registered proprietor refuses to execute a transfer, the registrar may, on notice to the registered proprietor, and on production of the land certificate, or office copy registered lease, and such other evidence as he may consider sufficient, make the proper entry on the register for the purpose upon a jt acct (*a*), upon havg the repaymt thof, with intt, &c., *as in form* I.

Agreement for loan by several on separate accounts.

III. AND WHAS the sd A., B. & C., *mtgees,* have agrd with the sd, *mtgor,* to lend him the sum of £—— in the sevl sums follg, that is to say, the sd A. £——, the sd, B. £——, & the sd. C. £——, upon havg the repaymt of the sd sevl sums of £——, £——, & £——, with intt, &c., *as in form* I.

Agreement to secure present loan and future advances.

IV. AND WHAS the sd, *mtgee,* has agrd with the sd, *mtgor,* to lend him the sum of £——, upon havg the repaymt thof, & also of any other sum or sums of moy wch may be lent to the sd, *mtgor,* [his hrs or assns (*b*)] by or may become owing from him [or them] to the sd, *mtgee,* [his exs, ads, or assns (*c*)] with intt, &c., *as in form* I.

Agreement to secure sum due on account stated.

V. AND WHAS upon an acct stated this day betn the sd, *mtgor,* & *mtgee,* there is owing to the sd, *mtgee,* from the sd, *mtgor,* the sum of £——, & it has been agrd that the repaymt thof, with intt at the rate hinafter mentd, shl be secd in mner hinafter appearg.

Agreement for payment of compound interest.

VI. AND WHAS it has been agrd that the sd loan shl be continued & the intt to accrue upon the sd sum of £——, shl [at the option of the sd, *mtgor,*] accumulate at compound intt in mner & subjt as hinafter appears.

Agreement that surety shall join.

VII. AND WHAS the sd, *surety,* has agrd to join in these psnts as surety for the sd, *mtgor,* in mner hinafter appearg.

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of carrying out the sale. But it must be remembered that great delay and expense may be incurred in obtaining the production of the land certificate, &c.; add to which that the Registrar might probably require some evidence of the title of the person applying for registration. It appears, therefore, that it would be a prudent precaution for a mortgagee of unregistered land to put on a caution against first registration (L. T. A., 1875, s. 60; L. T. R. 74 *et seq.*), and on notice being served on him of an application for registration, to call in his money unless the mortgagor consents (a) to lodge the land certificate with him, or (b) to give him a registered charge by way of further security. It will be also prudent, at all events in districts where registration is compulsory, to insert in the mortgage a covenant by the mortgagor not to register without the consent of the mortgagee and making the mortgage money payable, and the power of sale exercisable, without notice, on breach of covenant, form XXXVI., p. 50.

(*a*) See C. A., 1881, s. 61.

(*b*) The words in this bracket will be inserted if advances may be made to the heirs or assigns of the mortgagor; if the mortgaged property is leasehold, say "exs, ads, or assns." See *Re Watts,* 22 Ch. D. 5.

(*c*) The words in this bracket will be inserted if advances may be made by the representatives or assigns of the mortgagee.

Title of mortgagor to life policy or policies (*d*).

VIII. AND WHAS the sd, *mtgor*, is entitled to the poly [sevl pols] of assurce on his life, hby assned.

Title of mortgagor to policy or policies effected in name of mortgagee.

IX. AND WHAS the said, *mtgor*, as pt of the intd secy has effected a poly of assurce on his life in the name of the sd, *mtgee*, in the —— Assurce Socy for the sum of £——, dated, &c., nod ——, & under the annl prem of £—— [*or*, the sevl pols of assurce on his life in the name of the mtgee, wch are hinafter mentd, namely a poly in the —— Assurce Socy for the sum of £——, dated, &c., nod ——, & under the annl prem of £——, a poly, &c., &c., *or*, "the sevl pols mentd in the schdle hto"].

Guarantee policy.

X. WHAS a poly of assurce has been agrd to be effected with the —— Co Ld (hinafter called "the Co") & is intd to be issued immedly on the complon of these psnts whby in conson of an annl prem of £—— the —— Co will guarantee to the sd, *mtgee*, his exs, ads, & assns, the —— paymt of the sd ppal sum of £—— & the intt thron in mner in the sd poly mentd & subjt to the condons endorsed thron, & it is provided by such condons that the sd poly will continue from yr to yr so long as the prems thrunder are duly pd on the days appted for paymt thof or within —— days thrafter, in default whof the sd poly will be void.

Mortgage of freeholds.
Variations for freeholds, leaseholds, and copyholds.

XI. AND WHAS by an indre dated, &c., & made, &c., in conson of the sum of £——, pd by the sd B., *mtgee* (*e*), to the sd A., the sd A. covtd with the sd B. to pay to him on the —— day of —— then next, the sum of £——, with intt for the same at the rate of —— p.c. p.a.; AND further if the sd moys shd not be so pd to pay to him intt, at the rate afsd, by eql half-yrly paymts on the —— day of —— & the —— day of —— on the ppal moys for the time being remg due on that secy; AND by the same indre the sd A. grted unto the sd. B., his hrs & assns [among other hds], All those, &c., *freehd pcels, or,* "the freehd hds hby assured," To hold the same unto & to the use of the sd B., his hrs & assns, *if freehds only,* "subjt to a provo for redmon

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(*d*) It is generally better to give the particulars of the policies assigned in the operative part, as it facilitates the making out of the necessary notices of the assignment to be given to the offices.

(*e*) For trustees or others lending on a joint account, say, "*mtgees* out of moy belongg to them on a jt acct;" the other variations will be obvious.

of the same premes on paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt for the same in the meantime at the rate afsd, on the —— day of —— then next," *if freehds & leasehds,* " subjt to the provo for redmon thinafter contd ; And by the same indre the sd A. assned [demised] unto the sd B., his exs, ads, & assns, the premes comprd in the hinbfe recited indre of lease, To hold the same unto the sd B., his exs, ads, & assns, for the residue of the sd term of —— yrs grted by the sd lease [except the last day thof], subjt to the provo for redmon thinafter contd ; And in the sd indre now in recital was contd a provo for redmon of the sd freehd & leasehd premes, on paymt to the sd B., his exs, ads, or assns, of the sd sum of £——, with intt thron at the rate afsd, on the —— day of —— then next ; & it was thby agrd that the sd A. shd thenceforth stand possed of the nominal revon thby reserved of the sd term of —— yrs in trust for the sd B., his exs, ads, & assns, subjt to such equity of redmon as might for the time being be subsistg by virtue of the provo for redmon thinbfe contd " [*for copyhds add,* And by the same indre the said A. covtd with the said B., that he the sd A. & his hrs, & all other necy pties (if any), wd forthwith, at his & their own cost, surrender All that, *copyhd pcels, or,* " the copyhd hds hinafter mentd & covted to be surrendered " to the use of the sd B., his hrs & assns, accdg to the custom of the manor of ——, in the coy of ——, subjt to the manorial rents & services, & to a condon for makg void the same surrender (*a*) correspondg with the provo for redmon thinbfe contd as afsd], [And in the indre now in recital were contd a provo for reducg the rate of intt on the sd sum of £—— to the rate of —— p.c. p.a. as thrin mentd, & a power of sale & other powers & provons for further securg the repaymt of the sd sum of £—— & intt].

Conditional surrender of copyholds.

xii. And whas [in psuance of the covt in that behalf contd in the hinbfe recited indre of the —— day of ——, *or,* " the within-written indre,"] the sd, *mtgor,* on the —— day of ——, surrendered the sd, *or,* " within-descd," copyhd hds & premes, *or,* " the copyhd hds hinafter covtd to be surrendered," to the

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(*a*) If copyholds only, continue as follows :—" on paymt to the sd B., his exs, ads, or assns of the sum of £——, with intt for the same in the meantime at the rate afsd, on the —— day of —— then next."

use of the sd, *mtgee,* his hrs & assns, subjt to a condon for makg void the sd surrender upon paymt to the sd, *mtgee,* his exs, ads, or assns, of the sum of £——, with intt for the same at the rate of —— p.c. p.a., on the —— day of —— then next.

State of mortgage debt (*b*).

XIII. And whas the sd, *or,* " within-mentd," sum of £—— remains owing to the sd, *mtgee,* on the secy of the hinbfe recited, *or,* " within-written," *or,* " ppal " indre, but all intt for the same has been pd up to the date of these psnts, as the sd, *mtgee,* doth hby acknowe.

State of mortgage debt where interest in arrear (*b*).

XIV. And whas the sd, *or,* " within-mentd," sum of £—— togr with the sum of £—— for intt thron from the —— day of —— (makg the total sum of £——) remains owing to the sd, *mtgee,* on the secy of the hinbfe recited, *or,* " within-written," *or,* " ppal " indre.

Agreement for further advance.

XV. And whas the sd, *mtgee,* has agrd to lend to the sd, *mtgor,* the further sum of £—— (*c*), upon havg the repaymt thof, with intt at the rate hinafter mentd, secd in mner hinafter appearg.

Agreement for transfer, the mortgagor not being a party.

XVI. And whas the sd, *transferee,* has agrd to pay to the sd, *mtgee,* the sd sum of £——, *the amt due for ppal & intt, if any, in arrear* (*c*), upon havg such transfer as is hinafter contd of the sd mtge debt of £—— & intt & the secs for the same.

Agreement where he is a party.

XVII. And whas the sd, *transferee,* has, at the reqt of the sd, *mtgor,* agrd to pay to the sd, *mtgee,* the sum of £——, *the amt owing for ppal, & intt, if any* (*c*), upon havg such transfer as is hinafter contd of the sd mtge debt of £—— & intt, & the secs for the same.

Agreement for trans-

XVIII. And whas the sd, *transferee,* has agrd with the sd,

Variation where there have been further advances.

(*b*) Where there have been further advances the recital will commence :— " And whas the sd, *mtgee,* has since the date of the hinbfe-recited, *or,* ' within-written,' *or,* ' ppal ' indre advced to the sd, *mtgor,* upon the secy of the same indre, further sums amtg togr to the sum of £——: And whas the sd, *or,* ' within-mentd,' sum of £——, *origl advce,* & the sd sum of £——, *further advces,* makg togr £——, remain owing," &c., *continue as in text.*

(*c*) For several mortgagees or transferees lending on a joint account, add here :—" out of moy belongg to them on a jt acct."

fer and further advance.

mtgor (*a*), to pay to the sd, *mtgee,* the sd sum of £——, & to lend to the sd, *mtgor,* the further sum of £——, upon havg the paymt of the sd ppal sums of £—— & £——, makg an aggregate ppal sum of £—— (*b*), with intt at the rate hinafter mentd secd by a transfer of the said mtge debt of £—— & intt & the secs for the same & orwise in mner hinafter appearg.

Agreement for further security.

XIX. AND UPON havg the repaymt of the sd sum of £—— & intt further secd in mner hinafter appearg.

Desire to redeem.

XX. AND WHAS the sd, *mtgor,* is desirous of payg off the sd ppal sum of £—— (*c*), & havg the sd, *or,* "within-mentd," mtged premes reled & reconveyed in mner hinafter appearg.

The same, another form.

XXI. AND WHAS all ppal moys & intt wch were at any time owing on the secy of the hinbfe recited indre [s] of mtge [transfer & further chge] of the —— day of ——, &c., have been fully pd & satisfied, as the said, *mtgee,* doth hby acknowe, & the sd, *mtgor,* is desirous of havg, &c., *as in last form.*

That mortgage money has been paid off by instalments.

XXII. AND WHAS the sd, *mtgor* (*c*), has pd to the sd, *mtgee,* the sevl sums of £—— & £——, on the —— day of —— & —— day of ——, in pt satisfon of the said mtge debt of ——, & has pd to him the balce thof amtg to £—— on the exon of these psnts, & all intt on the ppal moys for the time being owing on the secy of the sd indre [s] of mtge [transfer & further chge] of the —— day of —— &c., up to the date of these psnts has also been fully pd as the sd, *mtgee,* doth hby acknowe.

General agreements to enter into covenants.

XXIII. AND WHAS it has been further agrd that such other covts, agrmts, & provons shl be entd into & made by & betn the sd pties hto as are hinafter contd.

(*a*) For several transferees lending on a joint account, add here :—" out of moys belongg to them the sd, *transferees,* on a jt acct."

(*b*) If the security is to extend to future advances, insert here " with any further sums wch may hrafter be advced by or become owing to the sd, *transferee,* his exs, ads, or assns, as hinafter mentd."

(*c*) If the mortgagor is a trustee, say " out of moys in his hands as tree of the sd settlemt, *or,* 'will,' applicable for that ppose."

CONSIDERATIONS.

I. In conson of the sum of £—— now pd to the sd, *mtgor*, by the sd, *mtgee* (*d*), the rect whof is hby acknowed.

Present advance.

II. In conson of the sum of £—— now pd to the sd, *third pty*, at the reqt of the sd, *mtgor*, by the sd, *mtgee*, the rect & paymt whof, in mner afsd, is hby acknowed.

Sum paid by mortgagee to third party at request of mortgagor.

III. In conson of the sum of £—— so owing by the sd, *mtgor*, to the sd, *mtgee*, as afsd.

Antecedent debt.

IV. In conson of the sevl sums of £——, £—— & £—— now pd to the sd, *mtgor*, by the sd, *mtgees*, in mner afsd, the rect of wch sd sevl sums the sd, *mtgor*, doth hby acknowe.

Sums paid by several on distinct accounts.

V. In conson of the sum of £—— now pd to the said, *mtgor*, by the sd, *mtgee*, the rect, &c., & of the covt by the sd, *mtgee*, hinafter contd, for the loan to the sd, *mtgor*, of the further sum of £—— by the instalmts & on the condons hinafter mentd.

Present advance and covenant for future advance.

VI. In conson of all ppal moys & intt secd by the hinbfe recited [mentd] indre [s] of mtge [transfer & further chge] of, &c., havg been fully pd & satisfied in mner afsd.

Mortgage moneys having been paid off.

COVENANTS FOR PAYMENT (*e*).

I. The sd, *mtgor*, hby covts with the sd, *mtgee*, to pay to him on the —— day of —— next, *usually the first day for*

To pay principal and interest.

(*d*) For trustees or others lending on a joint account, add here :—" out of moys belongg to them on a jt acct."

(*e*) There is in general no necessity to mention the representatives of either the covenantor or covenantee in a covenant for payment, the burden and benefit of which (being a mere personal covenant) passes to the representatives of the respective parties (see the specimen forms in the fourth schedule of the C. A., 1881, and s. 57) ; but sometimes, as where the security extends to future advances made by the representatives of the mortgagee to the representatives the mortgagor, they must be expressly mentioned ; see *Re Watts*, 22 Ch. D. 5. The words at the commencement of the covenant binding the " heirs, executors, and administrators " of the covenantor, being superfluous, are omitted ; see the C. A., 1881, s. 59, Vol. I., p. 2, note.

As to mentioning the representatives of the parties.

The third schedule to the C. A., 1881, gives a very short form of mortgage (limited, it should be observed, to freeholds or leaseholds) expressed to be " by way of statutory mortgage," which by s. 26 implies the ordinary covenant for payment (see s. 28), and proviso for redemption ; but this is a trifling gain, and although the form may be " varied or added to as circumstances require," an

Statutory mortgage

paymt of intt, the sum of £——, *the ppal sum*, with intt thron in the meantime at the rate of £—— p.c. p.a. from the date of these psnts.

To pay interest after default (*a*).

II. AND further if the sd moys shl not be so pd, to pay to him intt at the rate afsd by eql half-yearly, *or*, "qtrly" paymts on the —— day of ——, &c., *specify days for paymt*, in every year on the ppal moys for the time being remaing due on this secy (*b*).

By two or more jointly and severally (*c*).

III. THE SD, *covtors*, hby jtly & sevlly covt with the sd, *mtgee*, to pay to him, *continue as in forms* I. *&* II.

Covenant by tenant for life to pay interest during his life.

IV. THE SD, *tenant for life*, hby covts with sd, *mtgee*, to pay to him durg the life of the said, *tenant for life*, intt at the rate of —— p.c. p.a. by, &c., *as in form* II.

To pay present and future advances (*d*).

V. THE SD, *mtgor*, hby, &c., *continue as in form* I., *saying* "to pay to the mtgee [his exs, ads, or assns]." AND ALSO on such —— day of ——, *or*, —— day of —— as shl happen

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it has to some extent come into use, it is considered that its employment should be confined to small and simple transactions.

Remedy on covenant barred by statute.

The personal remedy on a covenant in a mortgage deed, as well as the remedy against the land, is barred by the lapse of twelve years, under the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8; (*Sutton* v. *Sutton*, 22 Ch. D. 511, followed in *Fearnside* v. *Flint*, *ib.*, 579). Where, however, the covenant is by a surety, payment of interest by the mortgagor will prevent the bar (*Re Powers*, 30 Ch. D. 291; *Lewin* v. *Wilson*, 11 App. Ca. 639; *Re Frisby*, 43 Ch. D. 106; *Barnes* v. *Glenton*, (1898) 2 Q. B. 223). A charge on personal estate is not affected by any Statute of Limitations, *Mellersh* v. *Brown*, 45 Ch. D. 225.

As to the implication of covenants by a registered charge, see *ante*, p. 1, note (*a*).

(*a*) As to the rights of the mortgagee to interest after default in the absence of a covenant, see *Mellersh* v. *Brown*, 45 Ch. D. 225; *Re Roberts*, 14 Ch. D. 49.

(*b*) Where the interest exceeds 4 per cent., having regard to the cases of *Ex p. Fewings*, 25 Ch. D. 338, and *Arbuthnot* v. *Bunsilall*, W. N. 1890, 37; 62 L. T. 234, distinguishing *Popple* v. *Sylvester*, 22 Ch. D. 98, it may be desirable to add, "or on any judgmt wch may be recovered hrunder." As to interest on a debt proved upon a debtor's estate under the Bankruptcy Act, 1883, and carrying interest, see the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 23.

(*c*) See also the forms of covenants by several in Vol. I., p. 605. The precise form of the covenant seems immaterial provided each covenantor is made to covenant severally, and the shorter form in the text will suffice, having regard to R. S. C. 1883, Order XVI., rules 4 and 6. This form is suitable for a covenant by principal and sureties. Judgment recovered against one of two joint contractors is a bar to an action against the other; and the rule applies where one is a married woman contracting in respect of her separate property: *Hoare* v. *Niblett*, [1891] 1 Q. B. 781.

(*d*) See *ante*, p. 4, n. (*b*).

next after the same resply shl be advanced or become owing to pay to him [his exors, ads, or assigns] every other sum wch may be advanced to the sd *mtgor* [his hrs or assns], by or wch may become owing except for intt from him [or them] to the sd, *mtgee,* [his exs, ads, or assns) with intt thron in the meantime at the rate afsd from the time of the same being adveed or becomg owing.

To pay principal and interest in respect of distinct debts, &c., to pay interest after default.

VI. THE SD, *mtgor,* hby covts with each of the sd, *mtgees,* septely to pay to him on the —— day of —— next the sum adveed by him towards the sd aggregate loan of £—— as afsd, with intt for the same in the meantime at the rate of —— p.c. p.a. from the date of these psnts, AND FURTHER, *continue as in form* II. *saying* "on the ppal moys for the time being remaing due on this secy in respect of his sd advce."

Covenants in a stock mortgage, with variations.

VII. THE SD, *mtgor,* hby covts with the sd, *mtgee,* to transfer into his name on the —— day of —— next the sum of £—— 2¾ p.c. Consold Stk, & in the meantime to pay to him sums of moy eql to the divds on the sd sum of stk, on the days for paymt of such divds, [*or,* & to pay to him on the sd —— day of —— intt on the sum of £——, being the psnt market value of the sd sum of stk at the rate of —— p.c. p.a. from the date of these psnts], AND FURTHER, so long as the sd sum of stk or any pt thof shl remain untransferred to pay to him sums of moy eql to the divds on the sd sum of stk, or on so much thof as shl for the time being remain untransferred on the days for paymt of such divds, [*or,* to pay to him intt at the rate afsd by eql half-yrly paymts on the —— day of —— & —— day of —— in every yr, on the sd sum of £——, or on such pt thof as shl not for the time being have been satisfied by a transfer of a proportionate part of the sd sum of stk].

To pay principal by instalments, and interest on unpaid principal (*e*).

VIII. THE SD, *mtgor,* hby covts with the sd, *mtgee,* to pay to the sd, *mtgee,* the sum of £——, *the ppal,* with intt for the same in the meantime at the rate of —— p.c. p.a., by the instalmts, at the times, & in the mner follg, that is to say, the ppal sum of £—— by —— eql half-yrly, *or,* "qtrly" instalmts

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As to payment by instalments.

(*e*) Where the mortgage money is to be repaid by instalments, but the mortgagee is to have the right to call in the whole sum on default in payment of any instalment (or on breach of any of the mortgagor's covenants), it is of £—— each, whof the first is to be pd on the —— day of —— next, & a like instalmt on every subseqt —— day of —— [& —— day of ——] until the sd ppal sum of £—— shl be fully pd, & the intt on the sd sum of £——, or on so much thof as shl from time to time remain unpd, by half-yrly, *or*, "qtrly," paymts on every —— day of ——, [& —— day of ——], along with the instalmts of the ppal, so that upon each such day the intt up to that day shl be pd, togr with the instalmt of ppal then payable as afsd, [AND further, that in case at any time any of the sd instalmts or intt, or any part thof resply, shl be in arrear & unpd for the period of *thirty* days after the time hinbfe appted for the paymt thof, or default shl be made in the pformce or observce of any of the covts on the pt of the sd, *mtgor*, hrin contd (other than the covt for paymt of the sd ppal moy & intt), then & in any such case the whole of the sd ppal moy wch shl for the time being remain unpd shl forthwith become payable, & shl be pd with intt at the rate afsd by the sd, *mtgor*, to the sd, *mtgee*, on demand].

On default in payment of any instalment the whole debt to be immediately payable (*a*).

IX. THE SD, *mtgor*, hby covts with the sd, *mtgee*, to pay to him or his assns [or any pson authorised in writg by him or them to demand the same,] on demand [in writg to be delivered or sent by post to the sd, *mtgor*, his exs, ads, or assns, or left upon the hds hby mtged] the sum of £——, *the ppal sum*, with intt thereon at (*c*) the rate of —— p.c. p.a. from the date of these psnts.

To pay principal on demand (*b*) with interest.

Variation where interest varies with Bank rate.

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generally more convenient to insert a covenant for payment and proviso for redemption, and other clauses in the ordinary form, and to qualify the whole by the proviso at p. 33, form X.; but the above form of covenant is sometimes equally convenient.

(*a*) This provision is valid; *The Protector, &c., Co.* v. *Grice*, 5 Q. B. D. 592.

(*b*) See another form extended to future advances, *post*, p. 136. It has been held that non-payment on demand of a person representing himself to be the agent of the mortgagee, before the mortgagor has had an opportunity of inquiring into the truth of the alleged agency, does not constitute default in payment on demand; *Moore* v. *Shelley*, 8 App. Cas. 285.

Interest varying with Bank rate.

(*c*) If the interest is to vary with the Bank rate, say "at a rate varyg from time to time with & being eql to [*or*, one p.c. above] the rate of discount for the time being allowed by the Governor & Co of the Bank of England on approved bills of exchange [but not to fall below 5 p.c. p.a.] from the date of these psnts."

By a firm. Variation for present and future advances.

X. THE SD, *mtgors,* hby jtly & sevlly covt with the sd, *mtgee,* that the sd, *mtgors,* or their respive hrs, exs, or ads, or some or one of them, or the sd firm of Z. & Co will pay, &c., *for paymt of ppal & intt as in form* I., *or psnt & future advces as in form* V., *extendg to further advces to,* "the sd, *mtgors,* or their respive hrs, exs, ads, or assns, or any of them, or the members or member for the time being of the sd firm of Z. & Co," *& for paymt of intt as in form* II., *saying throughout* "will pay" *instead of* "to pay."

To pay balance owing to bankers on account current. Variations where the mortgagors are a firm, and where the bank is a company.

XI. THE SD, *mtgor,* doth [*mtgors,* jtly & sevlly do] hby covt with the sd, *mtgees,* their exs, ads, & assns [the sd Bankg Co & their assns], that the sd, *mtgor,* his hrs, exs, or ads [the sd *mtgors,* or their respive hrs, exs, or ads, or some or one of them or the members for the time being of the sd firm of Z. & Co], will on demand in writg made to the sd, *mtgor,* his exs or ads, [*mtgors,* or their respive exs or ads, or some or one of them, or to the sd firm of Z. & Co.] [or left upon some pt of the premes hby mtged], pay to the sd, *mtgees,* their exs, ads, or assns [the sd Bankg Co or their assns], or one of the cashiers for the time being of the sd bank, the balce wch on the acct current of the sd, *mtgor,* [firm of Z. & Co for the time being] with the sd, *mtgees,* [bank] shl be for the time being owing in respt of bills, notes, or drafts accepted, pd or discounted, or advces made to or for the use or accommodon of the sd, *mtgor* [firm of Z. & Co], & for intt, commission, or other usual banker's chges or orwise, togr with intt on the sd balce from the time of such demand being made or left till the time of paymt at the rate of —— p.c. p.a. PROVD ALWAYS, that where any moy hby secd is or shl be also secd to the sd, *mtgees,* their exs, ads, or assigns [the sd Bankg Co or their assns], by any bill or other instrumt reservg a higher rate of intt than the rate hby reserved, nothg hrin contd shl affect the rt of the sd, *mtgees,*

Proviso keeping alive right to higher rate of interest on bills, &c. (*d*).

As to merger of lower in higher security.

(*d*) It is conceived that this provision would not render the mortgagees liable to the risk of the simple contract security created by subsequent bills of exchange, &c., merging in the security of the covenant; for the authorities show that merger would not take place unless the lower security was prior in date to the higher, nor even then if the latter was only a collateral security, nor unless the securities were for the same debt and in other respects the remedies were co-extensive, which would not be the case having regard to the different rates of interest, see 2 Dav., pt. 2, pp. 608—609; Fisher on Mortgages, p. 744; Ashburner on Mortgages, 488; *Chetwynd* v. *Allen,* (1899) 1 Ch. 353.

their exs, ads, or assns [the Bankg Co or their assns] to recover by virtue of any such bill or other instrumt such higher rate of intt or, as the case may be, the differce betn such higher rate & the rate wch shl have been pd hrunder.

By surety to pay interest on default of mortgagor.

XII. AND the sd, *surety*, hby covts with the sd, *mtgee*, that in case default shl at any time be made by the sd, *mtgor*, his hrs, exs, or ads, in paymt of the intt on the sd sum of £——, or any pt thof psuant to his covt hinbfe contd, then & in any & every such case the sd, *surety*, his hrs, exs, or ads, will on demand pay to the sd, *mtgee*, his exs, ads, or assns, the intt wch shl be so in arrear & unpd.

HABENDUM.

Freeholds.

I. TO HOLD the same UNTO & TO THE USE of the sd, *mtgee*, his hrs & assns (*a*) (*b*), subjt to the provo for redmon hinafter contd.

Leaseholds mortgaged by assignment or demise.

II. TO HOLD the same UNTO the sd, *mtgee*, henceforth for all the residue now unexpired of the sd term of —— yrs, grted by the sd indre of lease (*c*) (*b*) subjt to the provo for redmon hinafter contd.

Personalty.

III. TO HOLD the same UNTO the sd, *mtgee* (*b*), subjt to the provo for redmon hinafter contd.

(*a*) If preferred, for "his hrs & assns," say "in fee simple;" see the C. A. 1881, s. 51.

Variation for prior charges.

(*b*) If the mortgage is subject to a prior charge or charges, add here, "Subjt to the sd indre of mtge of the —— day of —— & the sum of £—— & intt thby secd as afsd, &;" "subjt to the prior chges & incumbces to wch the sd premes are hinbfe expd to be subjt &;" *or*, if the prior mortgage has not previously been mentioned, "subjt to a mtge dated, &c., & made, &c., for securg the sum of £—— & intt."

Variations for mortgage by demise, and for several leases.

(*c*) For a mortgage by demise, add here, "except the last day thof." For property held under several leases, say, "for all the respive residues now unexpired of the sevl terms of —— yrs & —— yrs grtd by the sd sevl indres of lease;" if by demise, add, "except the last day of each such term."

IV. To hold the same Unto & to the use of the sd, *transferee*, his hrs & assns, subjt to such equity of redmon as the same premes are now subjt to by virtue of the hinbfre recited, *or*, "mentd," *or*, "within written," *or*, "ppal," indre of mtge [indres of mtge & further chge], on payment to the said *transferee*, his exs, ads, or assns of the sd sum of £——, *the ppal*, & the intt due & to become due for the same, *or*, *if a new equity of redmon is created*, free from all equity of redmon under or by virtue of the hinbfe recited, *or*, "mentd," *or*, "within written," indre of mtge [indres of mtges & further chge], but subjt to the provo for redmon hinafter contd.

For transfer of mortgage of freeholds.

Variations where new equity of redemption is created.

V. To hold the same unto the said *transferee*, for the residue now unexpired of the sd term for wch the same were assned (*d*) by the hinbfe recited, *or*, "mentd," *or*, "within-written," indre of mtge, subjt to such equity, &c., *or*, *if a new provo for redmon is created*, "free from, &c., but subjt, &c.," *as in last form.*

The same for leaseholds mortgaged by assignment or demise.

VI. To hold the same premes Unto the sd, *transferee*, subjt to such rt, &c., *or* "free from, &c., but subjt," *as in form* IV.

The same for personalty.

VII. To hold the same premes unto, &c., &c., *as the case may be*, dischged from the sd sum of £—— & the intt thron, & all moys now or at any time htofe owing on the secy of, & from all chges, claims, & demands whatsr, under or by virtue of the hinbfe recited, *or*, "mentd," *or*, "within-written" indre of mtge, *or*, "indres of mtge, transfer, & further chge."

For reconveyance.

(*d*) Where the mortgage was by demise, for "assned" say "demised:" and if the mortgage contained a declaration of trust of the nominal reversion for the mortgagee, add after "mtge," "And for all the este of the sd, *mtgee*, in the sd nominal revon reserved by the same indre of the sd term created by the sd lease." For several leases, say, "for the respive residues now unexpired of the sd sevl terms for wch the same respive premes were assned [demised] by the hinbfe recited, &c., indre of mtge [& for all the este of the sd, *mtgee*, in the sevl nominal revons reserved by the same indre of the respive terms created by the sd leases] subjt, &c."

Variations for mortgage by demise, and for several leases.

PROVISOES FOR REDEMPTION (*a*).

Freeholds.

I. PROVD ALWAYS, & it is hby agrd that if the sd, *mtgor*, his hrs, exs, ads, or assns shl on the sd —— day of —— next pay to the sd, *mtgee*, his exs, ads, or assns, the sd sum of £——, *the ppal*, with intt thron in the meantime at the rate afsd, the sd, *mtgee*, his exs, ads (*b*), or assns shl at any time thrafter, upon the reqt & at the cost of the sd, *mtgor*, his hrs, exs, ads, or assns, reconvey the premes hinbfe grted (*c*), to the use of the sd, *mtgor*, his hrs & assns (*d*).

As to form of proviso for redemption.

(*a*) It is better in ordinary cases to adhere to the strict form of proviso for redemption on payment of the mortgage money on a specified day, to ensure that the mortgagee shall have the right of foreclosure, as is done in the form of mortgage in the 4th sched. to the C. A., 1881; and in the special statutory form of mortgage in the 3rd sched. to that Act, a similar proviso for redemption is implied; see s. 26, above, p. 9, note. But the power of the Court to direct a sale instead of foreclosure is considerably enlarged by the same Act, s. 25.

Duty of mortgagee to reconvey.

As to the duty of the mortgagee to reconvey on being paid off, see 32 Sol. J. 717.

Power of mortgagor to require transfer.

By the C. A., 1881, s. 15 (as amended by the C. A., 1882, s. 12, in consequence of the decision in *Teevan* v. *Smith*, 20 Ch. D. 724), the mortgagor, or any subsequent incumbrancer, is entitled on paying off a mortgage to require the mortgagee, including the registered proprietor of a charge on registered land, C. A., 1881, s. 2 (vi.) (unless he is or has been in possession) to transfer the debt and security to any third person instead of reconveying, notwithstanding any stipulation to the contrary. The section does not however apply to the case of a tenant for life who has failed to keep down the interest, and has obtained the usual order permitting him to redeem: *Alderson* v. *Elgey*, 26 Ch. D. 567. See as to the previous law, 2 Dav., pt. 2, p. 280.

As to notice prior to paying off a mortgage, see *post*, NOTICES.

The presumption is that limitations in the proviso for redemption, different from the previous limitations of the property, are not intended to affect the rights of the parties further than is necessary for the security of the mortgage money; see *Heather* v. *O'Neil*, 2 De G. & J. 399; *Plomley* v. *Felton*, 14 App. Cas. 61; *Re Byron*, [1891] 3 Ch. 474.

Vesting of mortgage estates in personal representatives.

(*b*) By the C. A., 1881, s. 30 (repealing the V. & P. A., 1874, s. 4), a mortgage estate of inheritance, or *pur autre vie* limited to the heir, devolves on the death (whether testate or intestate) of a sole mortgagee or the survivor of joint mortgagees on his personal representatives, except in the case of copyholds to which the mortgagee has been admitted (Copyhold Act, 1894, s. 88); the proviso in the case of freeholds should therefore be for reconveyance by the "exs, ads, or assns."

(*c*) Or, "appted," or "appted & grted," as the case may be; or if preferred, "assured," that word being appropriate to any mode of conveyance.

Variation for prior charge.

(*d*) Formerly the words "or as he or they shl direct" were inserted at the end of this and the following form, but they may safely be omitted

Leaseholds mortgaged by demise (e).

II. PROVD ALWAYS, & it is hby agrd, that if, &c., *as in precedg form*, the sd, *mtgee*, his exs, ads, or assns shl at any time thrafter upon the reqt & at the cost of the sd, *mtgor*, his exs, ads, or assns surrender or assn the sd premes hinbfe demised to the sd, *mtgor*, his exs, ads, & assns.

Leaseholds mortgaged by assignment or personalty.

III. PROVD ALWAYS, & it is hby agrd that if, &c., *as in form* I., the sd, *mtgee*, his exs, ads, or assns, shl at any time thrafter, upon the reqt & at the cost of the sd, *mtgor*, his exs, ads, or assns, re-assn the sd premes hinbfe assned to the sd, *mtgor*, his exs, ads, & assns.

Freeholds with leaseholds mortgaged by demise.

IV. PROVD ALWAYS, & it is hby agrd that if, &c., *as in form* I, the sd, *mtgee*, his exs, ads (*f*), or assns, shl at any time thrafter, upon the reqt & at the cost of the sd, *mtgor*, his hrs, exs, ads, or assns, reconvey the sd freehd premes hinbfe grted (*g*) to the use of the sd, *mtgor*, his hrs & assns, & surrender or assn the sd leasehd premes hinbfe demised to the sd, *mtgor*, his exs, ads, & assns.

Copyholds mortgaged alone.

V. SUBJT to a condon for makg void the surrender to be made in psuance of this covt if the sd, *mtgor*, his hrs, exs, ads, or assns shl on the sd —— day of —— next, pay to the sd, *mtgee*, his exs, ads, or assns, the sd sum of £——, with intt for the same in the meantime at the rate afsd.

Copyholds mortgaged with freeholds, leaseholds, or personalty.

VI. SUBJT to a condon for makg void the surrender to be made in psuance of this covt correspondg with the provo for redmon hinbfe contd.

In mortgage to secure present and future advances

VII. PROVD ALWAYS, & it is hby agrd that if the sd, *mtgor*, his hrs, exs, ads, or assns shl on the sd —— day of —— next, pay to the sd, *mtgee*, his exs, ads, or assns, the sd sum of £——, *the ppal*, with intt thron in the meantime at the rate afsd, & shl on such —— day of —— or —— day of —— as shl happen next after the same resply shl be adv ced or become owing, pay

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(C. A., 1881, s. 15). If there be a prior charge or charges, add, "subjt to the sd prior mtge of the —— day of —— if subsistg," *or*, "subjt to the sd prior chges & incumbces hinbfe mentd or refd to, or such of them as shl for the time being be subsistg."

(*e*) For a form providing for cesser of the sub-term (in lieu of surrender), which is sometimes used in the case of a mortgage by demise, see p. 19, form XVI.

(*f*) See note (*b*) last page.

(*g*) See note (*c*) last page.

to the sd, *mtgee*, his exs, ads, or assns, every other sum of moy wch may be advced by or become owing (except for intt) to him or them as afsd with intt thron as afsd, then & in such case the sd, *mtgee, &c., as in form* I., II., III. *or* IV., *as the case may be.*

In stock mortgage (*a*).

VIII. PROVD ALWAYS, & it is hby agrd that if the sd, *mtgor*, his hrs, exs, ads or assns shl, on the sd —— day of —— next, transfer into the name or names of the sd, *mtgee*, his exs, ads, or assns, the sum of £—— 2¾ p.c. Consold Stk, & shl in the meantime pay to him or them sums of moy eql to the divds of the sd sum of £—— Stk on the days for paymt of such divds [*or*, & shl also pay to him or them on the sd —— day of —— next, intt for the sd sum of £—— in the meantime at the rate afsd], then and in such case, &c., *as in form* III. *or* IV. *as the case may be.*

Where principal is to be repaid by instalments.

IX. PROVD ALWAYS, & it is hby agrd, that if the sd, *mtgor*, his hrs, exs, ads, or assns, shl pay to the sd, *mtgee*, his exs, ads, or assns, the sd sum of £—— *the ppal*, togr with intt thron, or on the unpd pt thof for the time being in the meantime, by the instalmts, at the times, at the rate, & in mner hinbfe mentd, psuant to the covt in that behalf hinbfe contd, then, &c., *as in form* I., II., III. *or* IV., *as the case may be.*

Where principal is to be paid on demand.

X. PROVD ALWAYS, & it is hby agrd, that if the sd, *mtgor*, his hrs, exs, ads, or assns, shl on demand pay to the sd, *mtgee*, his exs, ads, or assns, the sd ppal sum of £——, and shl, until paymt thof, pay to him or them intt on the sd sum of £——, or on so much thof as shl for the time being remain unpd at the rate afsd on the days hinbfe mentd, psuant to the covt in that behalf hinbfe contd, then, &c., *as in form* I., II., III. *or* IV., *as the case may be.*

Freeholds or leaseholds by trustees of strict settlement.

XI. PROVD, &c., that if the sd, *trees*, or other the trees or tree for the time being of the sd recited indre of settlemt [will] or any pson or psons inttd in the equity of redmon of the sd premes hinbfe assured, shl, &c., *the reconvce to be*, "at the cost of the pson or psons requirg the same," *freehds to be reconveyed*, "to the uses & upon the trusts, to & upon wch the sd premes stood limd by virtue of the hinbfe recited indre of

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(*a*) A mortgage to secure a specified sum of 3 p. c. stock made before the 27th March, 1888, may be redeemed by transfer of the same sum of 2¾ p. c. consolidated stock. National Debt Conversion Act, 1888, s. 2.

settlemt [will], immedly bfe the exon of these psnts, or such of the same uses and trusts as shl be subsistg," *leasehds to be surrendered or assned,* "to the sd trees, their exs, ads, or assns, or other the trees or tree for the time being of the sd recited indre of settlemt [will] upon the trusts upon wch the same were held by virtue of the sd indre of settlemt [will] immedly bfe the exon of these psnts, or such of the same trusts as shl be subsistg."

XII. PROVD, &c., that if the sd, *mtgors,* or eir of them or any pson or psons inttd in the equity of redmon of the sd premes hinbfe assured shl, &c., *as in form* I. *the reconvce to be,* "at the cost of the pson or psons requirg the same," to such uses, &c., *repeatg the power of apptmt verbatim,* & in default of & subjt to any such apptmt to the uses & upon the trusts to & upon wch the equity of redmon of the same premes shl for the time being stand limd or settled."

In mortgage by two persons under joint power.

XIII. PROVD, &c., that if the sd, *mtgors,* or their respive hrs, exs, or ads, or the members or member for the time being of the sd firm of Z. & Co, or any of them shl, &c., then the sd, *mtgee,* his exs, ads, or assns, shl at any time thrafter, upon the reqt & at the cost of the sd, *mtgors,* or their respive hrs, exs, ads, or assns, reconvey the sd premes hinbfe assured to them accdg to their respive rts & intts thrin [or as they shl direct].

Freeholds mortgaged by firm.

XIV. PROVD, &c, that if the sd, *mtgor,* his hrs, exs, ads, or assns, shl on the —— day of —— next, pay to the sd, *mtgees,* their exs, ads, or assns [the sd firm of Z. & Co,] the sd sum of £——, &c., then the sd, *mtgees,* their exs, ads, or assns, shl at any time thrafter, &c.

Freeholds mortgaged to firm.

XV. PROVD, &c., that if the sd, *mtgor,* his hrs, exs, ads, or assns, shl on demand, or witht any demand being made, pay to the sd, *mtgees,* their exs, ads, or assns [Bankg Co, or their assns], or to one of the cashiers at the sd bank, the balce wch shl for the time being be owing as hinbfe mentd, psuant to the covt hinbfe contd, then the sd, *mtgees,* their exs, ads, or assns [Bankg Co, or their assns] shl at any time thrafter, upon the reqt, &c.

In mortgage to bankers to secure account current.

XVI. PROVD, &c., that if the sd, *mtgor,* his hrs, exs, ads, or assns, shl, &c., *as in form* I., then & in such case the sd term hby grted shl absolutely cease & determine & become merged in the revon immedly expectant thron.

Proviso for cesser in mortgage of freeholds or leaseholds by demise.

Short form of proviso for redemption to follow the habendum.

XVII. Subjt to redmon on paymt on the —— day of —— next, to the sd, *mtgee*, his exs, ads, or assns, of the sd sum of £—— & intt, psuant to the covt of the sd, *mtgor*, hinbfe contd.

POWERS OF SALE (*a*).

I.

FREEHOLDS, Variations *for* Copyholds, Leaseholds *or* Personalty, *and where the mortgage is* Subject *to* Prior Charges.

Power to sell and convey.

And it is hby agrd that it shl be lful for the sd, *mtgee*, his exs, ads, or assns, at any time or times after the sd —— day

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Power of sale in the C. A., 1881.

(*a*) By the C. A., 1881, s. 71, the provisions of Lord Cranworth's Act, 23 & 24 Vict. c. 145, giving powers to mortgagees, were repealed, and by s. 19 *et seq.* other provisions more conformable to the ordinary forms of powers, and more advantageous, were substituted. By s. 19 (1), a mortgagee, where the mortgage is made by deed after 1881, has to the like extent as if the power had been conferred by the mortgage deed, but no further (among other powers), a power, when the mortgage-money has become due, to sell or concur with any other person in selling the mortgaged property, or any part thereof, either subject to prior charges or not, with the usual provisions as to the mode of sale, &c.; (by s. 21) to convey to the purchaser; and (by s. 22) to give receipts for the purchase-money. It has been decided that a mortgagee of freeholds and fixed machinery cannot under s. 19 sell the fixed machinery apart from the freeholds, whether the machinery passes only as being affixed to the land (*Re Yates*, 38 Ch. D. 112), or is expressly mentioned in the conveyance; *Brooks* v. *Brooks*, [1894] 2 Ch. 600. As to a mortgagee of leaseholds with trade fixtures by sub-demise, see *Southport, &c., Co.* v. *Thompson*, 37 Ch. D. 64.

Provisions as to events in which power exerciseable.

By s. 20 the power is not to be exercised unless and until (i.) notice requiring payment of the mortgage-money has been served on the mortgagor (which by s. 2 (vi) includes any person deriving title under him, or entitled to redeem the mortgage), or one of several mortgagors, and default has been made in payment of the mortgage-money, or part thereof, for three months (*i.e.* calendar months) after such service (and see the full and protective provisions in s. 67 as to the mode of giving the notice), or, (ii.) some interest under the mortgage is in arrear and unpaid for two months after becoming due, or, (iii.) there has been a breach of some provision contained in the mortgage or in the Act, and on the part of the mortgagor or some person concurring in the mortgage to be observed or performed, other than the covenant for payment; but s. 21 (2) of —— next, *the day apptd for paymt*, witht any further

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provides for the protection of the purchaser in case of a sale which is unauthorised or without proper notice, or otherwise irregular, the person damnified having his remedy in damages against the mortgagee. A *bonâ fide* purchaser without notice would be protected (*Bailey* v. *Barnes*, [1894] 1 Ch. 25), even if the security has been satisfied *Dicker* v. *Angerstein*, 3 Ch. D. 600), but not if he knows of an irregularity which cannot have been waived, *Parkinson* v. *Hanbury*, 1 Dr. & Sm. 143, 2 De G. J. & S. 450, L. R. 2 H. L. 1; followed in *Selwyn* v. *Garfit*, 38 Ch. D. 273; *qu.*, however, where the irregularity is one which might have been waived (*per* Bowen, L.J., 38 Ch. D. 285). As to the meaning of "waiver" see *ib.* 284; *Re Thompson*, 44 Ch. D. 492, 500. As to the third event in which the statutory power of sale is made exerciseable, it is to be remarked that there does not appear to be any provision *in the Act* which is "to be observed or performed by the mortgagor"; these words were probably meant to refer to the provisions as to fire insurance in ss. 19 and 23, but those provisions only give powers to the mortgagee, and if it is intended that the power of sale shall be exerciseable in case the insurance is not kept up by the mortgagor, a covenant to insure must be inserted in the deed, see *infra*, p. 42.

Other provisions.

Sect. 21 (3) provides for the application of the purchase-money after discharge of prior incumbrances to which the sale is not made subject, or after payment into Court under the Act (s. 5, see Vol. I. p. 514, note), of a sum to meet any prior incumbrances, in payment of the costs of the sale or any attempted sale, and of the mortgage-money, interest, and costs, and payment of the residue to the person or persons entitled to the mortgaged property, or authorised to give receipts for the proceeds of sale (see as to this where there has been a second mortgage, *West London, &c., Bank* v. *Reliance, &c., Building Society*, 27 Ch. D. 187; 29 Ch. D. 954; and where there has been a voluntary settlement of the equity of redemption, *Re Walhampton Estate*, 26 Ch. D. 391). By s. 21 (4) the power may be exercised by any person entitled to receive and give a discharge for the mortgage-money; by s. 21 (5), it is not to affect the right of foreclosure; by s. 21 (6) the mortgagee is protected from involuntary losses, and by s. 21 (7) he is empowered, after the power of sale has become exerciseable, to recover from any person any of the title deeds which would have been recoverable by a purchaser under the power of sale (which is a modification of s. 16 of the repealed Act).

Statutory powers may be varied.

The power of sale and other powers of the mortgagee and the powers relating thereto may be varied or extended by the mortgagee deed; and are to apply only if and as far as a contrary intention is not therein expressed (s. 19 (2, 3)).

To what mortgages the Act applies.

The powers of the repealed Act of Lord Cranworth applied to mortgages of real and leasehold property only, but the C. A., 1881, applies to mortgages of any property real or personal (except bills of sale of chattels which are governed by the Bills of Sale Act, 1882, *Calvert* v. *Thomas*, 19 Q. B. D. 204), and whether the mortgage is legal or equitable. But the mortgage must be by deed; the statutory powers do not therefore apply to a mortgage by deposit accompanied by a memorandum not under seal; nor to a mortgage of copyholds effected by conditional surrender only; a deed of covenant to surrender would, it is apprehended, be a mortgage within the Act, but, to preclude any doubt, the usual declaration of trust until surrender should be added.

Comparison with the repealed Act of Lord Cranworth.

The Act of 1881 is more beneficial than the repealed Act as to the events in which the power of sale is exerciseable, and is more favourable to the mortgagee than the ordinary express power, as three months' notice for payment is substituted for six, and in the case of interest being in arrear, two months is consent of the sd, *mtgor*, his hrs or assns (*a*) to sell the sd hds

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substituted for three. On the other hand, the power of conveying to the purchaser contained in the Act of 1881 (s. 21), which enables the mortgagee to convey the property "for such estate and interest as is subject to the mortgage" (agreeing with the ordinary express power), is more restricted than the power in the repealed Act (s. 15), which extended to "all the estate and interest" in the property which the mortgagor "had power to dispose of" (except as to copyholds), under which it has been held that a mortgagee of leaseholds by demise could assign the whole of the original term (*Hiatt* v. *Hillman*, 19 W. R. 694); and an equitable mortgagee could convey the legal estate vested in the mortgagor, *Re Solomon*, 40 Ch. D. 508; but under the Act of 1881, this cannot be done, *Re Hodson*, 35 Ch. D. 668.

Provisions where loan is to continue for a term or is repayable by instalments.

The power of sale under the Act is to be exerciseable "when the mortgage-money has become due," differing from the ordinary express power which is exerciseable at any time after the day appointed for payment of the mortgage-money. This difference is immaterial in the case of a mortgage in the ordinary form containing a covenant for payment of the principal on the first day appointed for payment of interest; and also, as is conceived, where there is a provision for the continuance of the loan for a term of years, conditional on the punctual payment of interest or otherwise, or for repayment by instalments, with a provision that on default in payment of any instalment the whole of the mortgage-money shall immediately become due, the clause for the protection of purchasers being in either of these cases sufficient to exclude any enquiry as to whether there has been a default; but where the money is payable by instalments *without* the right to call in the whole money in case of default, the statutory power may require to be supplemented by a special provision.

As to notice.

There may be a question what would be a sufficient notice to pay off the mortgage-money under s. 20 where there is a second incumbrance (as in *Hoole* v. *Smith*, 17 Ch. D. 434), but probably notice to any person interested in the equity of redemption would be held sufficient; or in the case of a mortgage of land it would be sufficient to affix it to the mortgaged premises, see Vol. I., p. 461, note.

Mortgagee, to what extent in fiduciary position.

The Court will not interfere with a mortgagee exercising his power of sale (however disadvantageously) for the purpose of realising his debt if done *bonâ fide* and without collusion with the purchaser (*Warner* v. *Jacob*, 20 Ch. D. 220). As to the liability of a mortgagee selling subject to compensation for errors in the particulars being allowed to the purchaser, see *Tomlin* v. *Luce*, 43 Ch. D. 191. A mortgagee in exercising his power is not, except as to the balance of his purchase-money after a sale, a trustee for the mortgagor, even if the mortgage is in the form of a trust for sale (*ib.*). As to the exercise of the power by a mortgagee who is the solicitor of the mortgagor, see *Macleod* v. *Jones*, 24 Ch. D. 289. A sale by a mortgagee to a trustee for himself is invalid, *Henderson* v.

Mortgagee solicitor of mortgagor.

(*a*) These words are applicable to freeholds or copyholds. For leaseholds or personalty, the "exs, ads, or assns," of the mortgagor will be substituted throughout. Where leaseholds or personalty are mortgaged with freeholds or copyholds, the "hrs, exs, ads, or assns," of the mortgagor will be the proper form, except in the trust of the surplus purchase-moneys, which will be for the mortgagor, "his exs, ads, or assns as psonal este."

& premes hby mtged or any of them or any pt or pts thof, eir togr or in pcels, & eir by public auction or private contract (*b*), & subjt to any special or other stipulons or condons as to title or evidce of title or orwise wch may be deemed pper, with power to buy in at any sale by auction, & to rescind or vary any contract for sale, & to re-sell the premes wch shl have been so bought in, or as to wch the contract for sale shl have been rescinded, witht being responsible for any loss occasioned thby (*c*), & for the pposes afsd to exte & do all such assurces

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Astwood, [1894] A. C. 150. As to a sale to one of several mortgagors, see *Kennedy* v. *De Trafford*, [1897] A. C. 180.

As to surplus sale moneys in mortgage of real and personal estate.

In a mortgage of real with leasehold or other personal property, a difficulty might arise on a sale under the statutory power after the mortgagor's death in apportioning the surplus proceeds between his real and personal representatives, which might make it necessary for the mortgagee to pay the money into Court under the T. A. 1893. In the ordinary express power of sale this is provided for (though not in a very satisfactory manner), by making the whole of the surplus payable to the personal representatives as personal estate, and if thought desirable, the statutory provisions may be so modified (see *post*, p. 28, form x.

A mortgagee of property containing minerals, can under his power of sale sell the minerals apart from the surface, or *vice versa*, under the T. A., 1893, s. 44, as amended by the T. A., 1894, s. 3, but the previous sanction of the Court must be obtained (see *Re Beaumont*, 12 Eq. 86; *Re Wilkinson*, 13 Eq. 634; *Re Hirst*, 45 Ch. D. 263). To obviate the necessity for an application to the Court, the power should in such a case be expressly extended to the sale of minerals and surface separately. See clause, *post*, p. 27.

Use of statutory power of sale.

The statutory power of sale is adapted for use and may be safely relied on, as it is in practice in all ordinary cases (except for property situate abroad); and may be varied or extended if need be; but in important transactions, or where any considerable modifications in the statutory power would be required, it may be better to insert an express power. If the mortgage is not intended to carry a power of sale, the Act must be expressly excluded.

Registered land.

As to the powers of sale of the proprietor of a registered charge, see *ante*, pp. 1 and 2, note (*a*).

Variation for policy.

(*b*) For a policy of assurance, add here:—"& as to any policy of assurce eir by way of surrender to the office or orwise."

Variation for prior charge.

(*c*) If the mortgage is subject to prior charges, add here:—"& to make any such sale as afsd, eir subjt to the sd prior mtge or chge of the —— day of —— [*or*, subjt to any prior chges or incumbces affectg the premes sold or any pt thof, whether bindg on the pson or psons exercisg this power or not], or any pt thof, or dischged thfrom, & in the latter case eir upon the terms of the same, or any pt thof, being dischged or provd for out of the pchase-moy or by paymt into Ct or orwise."

Events in which power is to be exercised.

& things as he or they shl think fit (*a*): PROVD ALWAYS, & it is hby agrd that the sd, *mtgee*, his exs, ads, or assns, shl not exercise the power of sale hinbfe contd, unless & until default shl have been made in paymt of some moys hby secd, & he or they shl have given a notice in writg to the sd, *mtgor*, his hrs, exs, ads, or assns, or some or one of them, to pay off the moys for the time being owing on this secy, or left a notice in writg to that effect (*b*) at or upon some pt of the sd mtged premes, & default shl have been made in paymt of such moys or pt thof for *six* calr months from the time of givg or leavg such notice, or unless & until some intt owing on this secy shl be in arrear for *three* calr months [or unless & until default shl have been made in the pformce or observce of some covt or provon hrin contd, & on the pt of the sd, *mtgor*, his hrs, exs, ads, or assns, to be pformed or observed, other than the covt for paymt of the sd ppal moys & intt], & any such notice as afsd shl be sufft although not addressed to any pson by name or description, & although any pson or psons affected thby may be unborn, unascertained, or under disability: PROVD ALSO, & it is hby decld that, upon any sale purportg to be made in

Proviso for protection of purchasers.

Power of personal representatives of mortgagee to convey.

(*a*) The power is in all cases given to the personal representatives of the mortgagee, whether the mortgaged property is real or personal, so as to go with the debt; and as a mortgaged estate of inheritance now vests in the personal representatives of the mortgagee under s. 30 of the C. A., 1881 (except in the case of copyholds to which the mortgagee has been admitted, Copyhold Act, 1894, s. 88), the personal representatives can in the case of freeholds, or copyholds to which the mortgagee had *not* been admitted, execute the necessary conveyance to the purchaser without the concurrence of the heir or devisee; but in the case of copyholds, the following provision, which was usual in the old form of power, should be added here to meet a case coming within the last-mentioned Act:—

Provision that heirs, &c., of mortgagee shall join in conveyance of copyholds.

"PROVD ALWAYS that upon a sale of the sd copyhd premes or any pt thof by any pson or psons in whom the legal este thrin shl not be vested, the pson or psons in whom the same shl be vested shl exte such conveyce thof as shl be required for effectuatg the sale."

Variation for personalty.

(*b*) For personalty, instead of "at or upon some pt of the mtged premes," say, "or sent such notice by post in a registered lre addressed to him or them at his or their or some or one of their usual or last known place or places of abode or business in England." See as to the mode of serving notices, the C. A., 1881, s. 67.

psuance of the afsd power in that behalf, the pchaser or pchasers shl not be bound to see or inquire whether eir of the cases mentd in the provo lastly hinbfe contd has happened, or whether any default has been made in paymt of any moys hby secd, or whether any moy remains owing on this secy, or as to the necessity or expediency of the condons subjt to wch the sale is made, or orwise as to the regularity of the sale, or be affected by express notice of any irregularity (*c*) whatsr thrin, & notwg any such irregularity such sale shl, as far as regards the safety & proton of the pchaser or pchasers, be deemed to be within the afsd power in that behalf, & be valid & effectual accdly, & the remedy of the sd, *mtgor,* his hrs or assns (*d*), in respt of any breach of the provo lastly hinbfe contd, or of any irregularity in such sale shl be in damages only: AND IT IS HBY (*e*) agrd that upon any such sale as afsd the rect of the sd, *mtgee,* his exs, ads, or assns, for the pchase-moy (*f*) shl effectually dischge the pchaser or pchasers thfrom, & from being concerned to see to the applicon thof or being answerable for the loss or mis-applicon thof: AND IT IS HBY further agrd that the sd, *mtgee,* his exs, ads, or assns, shl hold the moys to arise from any such sale as afsd (*f*) upon trust in the first place, by & out of the same to reimburse himself or themselves & to pay all costs & expses incurred in or about such sale (*g*) or orwise in respt of the premes: AND in the next place, to apply such moys in or towards satisfon of the moys for the time being owing on this secy (*h*), & then to pay the surplus (if any) of the said pchase-moys unto the sd, *mtgor,* his hrs or assns (*i*): AND IT IS HBY further decld that the afsd power of

Receipt clause for purchase-money.

Trusts of purchase-money.

Power may be exercised by

(*c*) See p. 20, note (*a*).

(*d*) See p. 22, note (*a*).

(*e*) The statutory power to give receipts in 22 & 23 Vict. c. 35, s. 23, and the C. A., 1881, s. 22, would no doubt suffice, but where an express power of sale is inserted it is usual to include the power to give receipts.

(*f*) If the mortgage is subject to prior charges, add, "or such pt thof as shl be pd to him or them."

(*g*) That a mortgagee is entitled to costs of an abortive sale, see *Farrer* v. *Lacy Hartland & Co.*, 25 Ch. D. 636, aff. 31 Ch. D. 42.

(*h*) In the case of a mortgage of a policy of insurance or other chose in action, where the mortgage is to continue for a term, see the provision, *infra*, p. 40, note (*c*).

(*i*) See p. 22, note (*a*).

any person entitled to mortgage-money.

sale may be exercised by any pson or psons who shl for the time being be entled to rece & give a dischge for the moys owing on this secy.

II.

SHORT *Form for any kind of* PROPERTY (*a*).

The power to sell.

AND IT IS HBY agrd that it shl be lful for the mtgees, at any time or times after the sd —— day of —— next, witht any further consent of the mtgor to sell the sd mtged premes, or any pt thof, eir togr or in pcels or septely, & eir by public auction or private contract [& in the case of any policy of assurce, eir by surrender to the office or orwise], & subjt to any stipulons as to title or orwise, & with power to buy in at any sale by auction, & to rescind or vary any contract for sale, & to re-sell witht being responsible for loss, & to enter into, exte, & do any agrmts, assurces, or acts for the pposes afsd: PROVD THAT the sd power of sale shl not be exercised unless default shl have been made in paymt of some moys hby secd, & the mtgee shl have given a notice in writg to the mtgor, to pay off the moys owing on this secy, or left such a notice at his usual or last known place of abode [or upon the sd mtged premes], & default shl be made in paymt of such moys, or pt thof, for *six* calr months from the time of givg or leavg such notice, or unless some intt due under this secy shl be in arrear for *three* calr months: PROVD ALSO that no pchaser shl be concerned to enquire whether the last precdg clause has been complied with, or whether any moy remains owing on this secy, or orwise as to the regularity of the sale, wch, so far as regards the safety & proton of the pchaser, shl be valid notwg any want of compliance with the last precedg clause or other irregularity: AND IT IS HBY further decld that the mtgee shl out of the pchase-moys arising upon any such sale pay all costs incurred by him in or about the sale or

Events in which power is to be exercised.

Proviso for protection of purchasers.

Application of purchase-money.

(*a*) This form is adapted to a case in which the interpretation clause, p. 61, is used; but in general, where brevity is desired, the power may be omitted in reliance on the statute.

orwise in respt of the premes, & in the next place apply the same in or towards satisfon of the moys owing on this secy, & then pay the surplus (if any) to the mtgor.

III. PROVD ALWAYS & it is hby agrd that the power of sale vested in the sd, *mtgee,* his exs, ads, or assns, by virtue of these psnts & the statute in that behalf, shl be extended so as to authorise him or them to sell the surface only of the said mtged premes or any pt thof, apt from, & witht the mine & minls in, under, or upon the same, or such mines & minls, or any of them, apt from, & witht the surface of such premes, & with or witht a reservon or grt of any rts of searchg for, workg, gettg, carryg away, & disposg of the same mines & minls, & any other rts or easemts incidental thto.

Power to sell surface and minerals separately.

IV. PROVD ALWAYS & it is hby agrd that the power of sale vested in the sd, *mtgee,* his exors, ads, or assns, by virtue of these psnts & the statute in that behalf shl be extended so as to authorise a sale by tender & so that it shl be in the uncontrolled discron of the pson or psons sellg, whether such sale be made by public auction, private contract or tender.

Power to sell by tender.

V. PROVD ALWAYS, & it is hby agrd that the sd, *mtgee,* his exs, ads, or assns, shl not exercise the power of sale vested in him or them by virtue of these psnts & the statute in that behalf unless & until, &c., *insert express provons, see* p. 24, but the agrmt lastly hinbfe contd shl not affect the provons contd in the sd statute for the proton of pchasers.

Clause modifying statutory power of sale.

VI. AND IT IS HBY AGRD that the power of sale conferred on mtgees by the Convcg & Law of Ppty Act, 1881, shl apply to this secy, but witht the restrons thrin contd as to givg notice or orwise, & so that for the ppose of a sale of the sd premes hby mtged or any pt thof under such statutory power, the whole of the ppal moy hby secd shl notwg anythg hrin contd be deemed to become due immedly on the exon of these psnts (*b*).

Clause extending statutory power of sale.

(*b*) Where the mortgage debt is payable on demand, add :—" although no demand of paymt shl have been made." For clause extending the statutory power of sale to the bankruptcy, &c., of the mortgagor, see *post,* p. 145.

Clause protecting mortgagee in case of registration.

VII. AND IT IS HBY decld that if an applicon shl be made for the registron of any pson, psons, or a corporon as proptor or proptors of the hds hby mtged or any pt thof, the ppal moys hby secd shall become immedly payable and the provons of section 20 of the Convcg & Law of Ppty Act, 1881, shl not apply to this secy.

Clause in aid of statutory power of sale where mortgage-money repayable by instalments.

VIII. PROVD ALWAYS & it is hby agrd that upon any sale under the statutory power in that behalf the pchaser shl not be bound or concerned to see or enquire whether any default has been made in paymt of the sd ppal moy hby secd, or any instalmt thof, or any intt thron contrary to the provons hrof, or orwise as to the necessity or propriety of the sale, or be affected by notice that no such default has been made as afsd, or that the sale is orwise unnecy or impper.

Proviso that mortgage-money shall be deemed to become due on a specified day for the purpose of a sale.

IX. PROVD ALWAYS & it is hby agrd that for the ppose of any sale of the sd premes hby mtged or any pt thof under the power of sale vested in the sd, *mtgee*, his exs, ads, & assns, by virtue of these psnts, & the statute in that behalf, the whole of the ppal moy hby secd shl be deemed to become due on the —— day of ——.

Declaration in a mortgage of real and personal estate that surplus sale moneys are to be personalty (*a*).

X. PROVD ALWAYS & it is hby agrd that any surplus remaing of the moys reced on a sale (whether in the lifetime of the sd, *mtgor*, or after his death) of all or any of the sd premes hby mtged, under the power of sale vested in the sd, *mtgee*, his exs, ads, & assns, by virtue of these psnts, & the statute in that behalf, after payment of all ppal moy, intt, & costs hby secd, shl be pd to the sd, *mtgor*, his exs, ads, or assns, as psonal este.

Power to mortgagor to sell part of mortgaged premises on payment of the purchase-money to the mortgagee.

XI. PROVD ALWAYS & it is hby agrd that the sd, *mtgor*, his hrs or assns, may at any time contract for the sale of any pt or pts of the sd mtged premes at the best price that can reasbly be obtained for the same, & the sd, *mtgee*, his exs, ads, or assns, shl on rect of the full amt of the pchase-moy for the same, togr with all intt due up to that time under this secy, join in conveyg the ppty sold to the pchaser, the pchase-moy so reced being in every such case accepted in pt dischge of the ppal sum hby secd & remaing unpd.

Declaration

XII. PROVD ALWAYS & it is hby agrd that the power of sale

(*a*) See p. 22, note.

conferred on mtgees by the Convcg & Law of Ppty Act, 1881, shl not apply to this secy.

excluding statutory power of sale.

XIII. PROVD ALWAYS, &c., that nothing hrin contd shl affect or prevent the exercise of the power of sale contd in or incident to the sd indre of mtge of the —— day of ——.

Proviso in transfer keeping alive power of sale in original mortgage (*b*).

XIV. PROVD ALWAYS & it is hby agrd & decld that a sale in lots of any leasehd land hby mtged may be effectuated by an assnmt of the whole of the ppty demised by the lease to one pchaser & by the grant eir by the *mtgee*, his exs, ads, or assns, or by such pchaser, his exs, ads, or assns, to each of the other pchasers of an underlease of the lot pchased by him for the whole term, less one day, at such apportioned rent & subjt to such covts as may be thought pper.

Power to sell leaseholds in lots by way of underlease.

XV. PROVD ALWAYS & it is hby agrd & decld that any sale of the premes hby mtged or any pt thof may be made by the *mtgee*, his exs, ads, or assns, eir subjt to or dischged from (*c*) the sd mtge debt of £—— & intt or upon any terms of indemnity agst the same wch the sd, *mtgee*, his exs, ads, or assns may think fit.

Addition to statutory power in second mortgage.

XVI. PROVD ALWAYS & it is hby agrd that the provons of the 67th section of the Convcg & Law of Ppty Act, 1881, with respt to notices required or authorised by that Act to be served on mtgors, shl apply to any notices required or authorised by or under these psnts to be served on or given to the sd *mtgor*, his hrs, exs, ads, or assns, or any of them.

Addition to power of sale referring to the C. A., 1881, s. 67, as to notices (*d*).

(*b*) See *Boyd* v. *Petrie*, 7 Ch. 385.

(*c*) Where there are several incumbrances, some of which may be annuities, continue from this point as follows:—" all or any pt or pts of the chges & incumbces subjt to wch the sd premes are hby mtged, & in the last-mentioned case upon the terms of the same or any of them or any pt or pts thof resply being pd off or pchasd out of the pchase-moy of the hds sold or being provd for by paymt into Ct under the statute in that behalf, or upon the terms of any investmts being made [or of any governmt or other life anny or annies being pchased] out of such pchase-moys or upon any other terms of indemnity agst the sd chges & incumbces or any of them or any pt or pts thof resply wch the sd, *mtgee*, his exs, ads, or assns shall think fit."

(*d*) This clause may be added to the express power of sale in lieu of the usual

MISCELLANEOUS CLAUSES (*b*).

Declaration of trust of copyholds till surrender (*c*).

Power of attorney to surrender (*d*).

I. AND THE sd, *mtgor*, doth hby declare that until such surrender shl be made, he the sd, *mtgor*, his hrs & assns, shl stand seised of the sd premes hinbfe covted to be surrendered in trust for the sd, *mtgee*, his hrs & assns, subjt to such equity of redmon if any as the same premes wd for the time being have been subjt to if such surrender had been made, AND doth hby irrevocably appt the sd, *mtgee*, his exs, ads, & assns, & every of them the atty & attys of him the sd, *mtgor*, in his name & on his behalf at any time to surrender the same premes psuant to the covt hinbfe contd, & to exte & do all instrumts & acts necy or pper for that ppose.

Declaration of trust of nominal reversion in mortgage of leaseholds by demise (*e*).

Power of attorney to assign the reversion.

II. AND THE sd, *mtgor*, doth hby declare that he the sd, *mtgor*, his exs, ads, & assns, shl henceforth stand possed of the nominal revon hby reserved of the said term of —— years (*f*), in trust for the sd, *mtgee*, his exs, ads, & assns, subjt to such equity of redmon (if any) as may for the time being be subsistg by virtue of these psnts, & to dispose thof as he or they shl direct, AND doth hby irrevocably (*d*) appt the sd, *mtgee*, his exs, ads, & assns, & every of them, the atty & attys of him the sd, *mtgor*, in his name & on his behalf at any time to assn the same nominal revon to the sd, *mtgee*, his exs, ads, & assns, or as he or they shl think fit, subjt to the equity of redmon, if any, for the time being subsistg as afsd, & to exte & do all deeds, instrumts & acts necy or pper for that ppose. AND it is hby

Power to mortgagee

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provisions as to notices, the statutory provisions being very full and sufficient in this respect.

(*b*) As to variations for several mortgagees, see p. 3, note.

(*c*) See p. 21, note.

By C. A., 1882, powers of attorney can be made irrevocable.

(*d*) See the C. A., 1882, s. 8, enabling a power of attorney given for valuable consideration to be made irrevocable in favour of a purchaser (including a mortgagee, see s. 1); but it must be *expressed* to be irrevocable. It seems a question whether the power can be made available against the mortgagor, his heirs or assigns, so as to displace intermediate dealings or devolutions. Of course an immediate surrender ought, if possible, to be taken.

(*e*) That such a clause does not render the mortgagee liable for the rent and covenants of the lease, see 2 Dav., Pt. 2, p. 120 *et seq*.

Variation for several leases.

(*f*) For several leases, say here :—"respive nominal revons hby reserved of the sevl terms for wch the sd respive premes hinbfe demised are resply held under the sd respive leases ;" and subsequently, "the same respive nominal revons."

agrd that it shl be lful for the sd, *mtgee,* his exs, ads, & assns, to appt a new tree or new trees of the sd nominal revon and in parlar at any time or times to appt such new tree or new trees in the place of the *mtgor* or his assns, or any tree appted under this power as if he or they were dead.

to appoint the purchaser a new trustee of nominal reversion (*g*).

III. PROVD ALWAYS & the sd, *mtgor,* doth hby chge the hds hby mtged with the paymt to the sd, *mtgee,* of intt at the rate afsd on the —— day of —— & —— day of —— in every yr on the ppal moys for the time being due on this secy.

Charge of interest after default (*h*).

IV. IT IS HBY AGRD that the sd *mtgee* shl be entled to the custody of the land certfe of the hds hby chged, *or,* " mtged."

Custody of land certificate (*i*).

V. IT IS HBY AGRD that the sd *mtgor* shl at his own expse exte a transfer to be completed by registron of the lands hby mtged to the sd *mtgee,* & deliver the land certfe thof to the sd *mtgee,* and that the sd *mtgee,* his exs, ads, or assns, shl hold the same hds subjt to such rt or equity of redmon as is hinbfe contd.

Proviso in mortgage of registered land intended to be carried out by a registered transfer(*j*).

VI. IT IS HBY AGRD that the sd *mtgor* shl at his own expse exte and perfect by registron a charge on the land hby mtged with the paymt to the sd *mtgee,* on the —— day of —— of the ppal sum of £—— with intt at the rate afsd payable half-yrly on the —— day of —— and —— day of —— in every yr, and with a power of sale exerciseable after the —— day of ——.

Covenant in mortgage of registered land to execute and register a charge (*j*).

VII. PROVD ALWAYS & it is hby agrd that if the sd, *mtgor,* his

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(*g*) As to the effect of this clause which takes advantage of the T. A., 1893, s. 12, enabling the trust estate to be vested by declaration on an appointment of new trustees, see *London, &c. Co.* v. *Goddard,* [1897] 1 Ch. 642. It is conceived that a sole trustee may be appointed, notwithstanding the words "as joint tenants" in that section; see Vol. I., p. 462, note. The declaration of trust does not prevent the trustee in bankruptcy of the mortgagor from disclaiming the nominal reversion (*Re Maughan,* 14 Q. B. D. 956).

As to vesting nominal reversion in purchaser under C. A., 1881, s. 34.

(*h*) Where a mortgage is made by trustees, who as a general rule decline to enter into any covenants for payment, some practitioners, for the purpose of showing on what days interest is to be payable, insert a covenant by the trustees for payment of interest "but not so as to create any psonal liability on their pt." This proviso appears to be void for the repugnancy, so that the trustees are liable on their covenant. Elph. Interp. 427. The clause in the text avoids this inconvenience.

(*i*) See L. T. A., 1897, s. 8 (4). This should be stipulated for so as to prevent the mortgagor creating other charges without the knowledge of the mortgagee.

(*j*) Either of these clauses may be inserted in a mortgage of registered land made by an unregistered assurance intended to be protected by a caution only.

Provision for reduction of interest on punctual payment (*a*).

hrs, exs, ads, or assns, shl on every (*b*) half-yrly, *or,* "qtrly" day on wch the intt is hinbfe made payable under this secy or within *twenty-one* days after (*c*) each of such days resply, pay to the sd, *mtgee,* his exs, ads, or assns, intt for the ppal sum for the time being owing to him or them on this secy at the rate of ——, *the reduced rate,* p.c., p.a., & if the sd, *mtgor,* his hrs, exs, ads, & assns, shl at all times (*d*) pform and observe all the covts hrin expd or implied (*e*), & on his or their pt to be pformed or observed (other than the covts for paymt of the sd ppal sum of £—— & the intt thron), then the sd, *mtgee,* his exs, ads, or assns shl accept intt for the ppal sum for the time being owing as afsd at the rate of ——, *the reduced rate,* p.c., p.a., in lieu of ——, *the higher rate,* p.c., p.a., for (*f*) every half *or* "qtr of a" yr for wch such intt shl be pd to him or them within such *twenty-one* days as afsd. PROᵛD that if the sd, *mtgee,* his exs, ads, or assns, shl become entled to sell the sd mtged premes, or if he or they shl (whether psonally or by a recer appted under the power vested in him or them in that behalf, or by any Ct of competent jurisdon) enter into posson or rect of the rents & profits of the sd mtged premes or any pt thof (*g*), then & in such case the provon lastly hinbfe contd for redon of intt on punctual paymt shl cease to operate.

Proviso for cesser of provision.

(*a*) In the form in the text one omission to pay the interest within 21 days puts a stop to the right of reduction. If it is intended that the omission should stop the right for the current half year [or quarter], only adopt the variations in notes (*b*), (*c*), (*d*), and (*f*), *infra.* "Punctual" means "on the day," *Leeds, &c.,* v. *Broadbent,* [1898] 1 Ch. 343.

(*b*) "Any."

(*c*) For "each of such days resply" say "such day."

(*d*) "Durg the precedg half yr [qtr] endg on such day."

(*e*) This word has reference to the statutory covenants for title.

(*f*) "For such half [qtr] yr."

Cesser of provision for reduction of interest.

(*g*) The provision for the reduction of interest would cease on the mortgagee entering into possession without express provision: *Union Bank of London* v. *Ingram,* 16 Ch. D. 53; *Cockburn* v. *Edwards,* 18 Ch. D. 449; *Bright* v. *Campbell,* 41 Ch. D. 388. If there are prior incumbrances the following should be added there:—"or in case any pcdg or steps shl be taken by or on behalf of the pson or psons inttd under the said indre of mtge of the —— day of ——, [*or,* inttd in any of the sd prior chges or incumbces], or any of such psons, for exercisg or

Proviso for continuance of loan for a term certain (*c*).

VIII. PROVD ALWAYS & it is hby agrd that if the sd, *mtgor*, his hrs, exs, ads, or assns shl on every half-yrly [qtrly] day on wch the intt hinbfe made payable under this secy until the —— day of——, or within *fourteen* days after each of such days resply (*d*), pay to the sd, *mtgee*, his exs, ads, or assns, intt for the ppal sum for the time being owing to him or them on this secy at the rate afsd [*or, if there is a provo for redon of intt on punctual paymt* "at the rate of *the reduced rate,* p.c., p.a.], and if the sd, *mtgor*, his hrs, exs, ads, & assns shl at all times pform & observe all the covts hrin expd or implied, & on his or their pt to be pformed or observed, other than the covts for paymt of the sd ppal sum of £—— & the intt thron, then the sd, *mtgee*, his hrs, exs, ads, or assns shl not before the sd —— day of ——, call in the sd sum of £—— (*e*) or any pt thof.

Proviso that mortgagor shall not be at liberty to pay off for a term certain.

IX. PROVD ALWAYS, & it is hby agrd that the said, *mtgor*, his hrs, exs, ads, or assns, shl not be entled to pay off the sd sum of £——, (*e*) or any pt thof, bfe the sd —— day of ——.

Proviso for

X. PROVD ALWAYS, & it is hby agrd that if the sd, *mtgor*,

enforcg any powers or remedies for recoverg paymt of any moys secd by the sd indre of mortge, [*or*, recoverable in respt of any of the sd prior chges or incumbces], agst or upon the sd premes hby mtged or any pt thof."

Proviso where there are prior incumbrances.

(*c*) If there are prior incumbrances, add the following proviso at the end of the clause :—

"Provd also that in case any pcdg, &c., *as in note* (*g*), *p.* 32, then & in such case the provon hinbfe contd for the continuce of the said loan for the term hinbfe mentd, *or, as the case may be,* 'for paymt of the ppal moys hby secd by instalmts,' shl cease to operate."

(*d*) If the interest is not paid punctually, the mortgagee will not by receiving it after it has become due waive his right to call in the principal before the end of the term, *Keene* v. *Biscoe*, 8 Ch. D. 201. If no interest is paid, time begins to run under the Statute of Limitations as to both principal and interest from the 21 days when the first instalment of interest becomes due; *Reeves* v. *Butcher*, [1891] 2 Q. B. 509.

(*e*) Where appropriate, add :—"or any further ppal sum or sums wch may be adveed by or become owing to him or them under this secy," "or any other ppal moys for the time being owing on this secy."

payment by instalments (b).

his hrs, exs, ads, or assns, shl pay to the sd, *mtgee,* his exs, ads, or assns, the sd sum of £——, *the ppal,* with intt for the same at the rate afsd to be computed from the date of these psnts by the instalmts at the times & in the mner hinafter mentd, that is to say, the sd ppal sum of £—— by —— eql [half] yrly paymts of £—— each, whof the first is to be pd on the —— day of —— next & a subseqt instalmt is to be pd on every —— day of —— [& —— day of ——], & the intt on the ppal sum for the time being unpd by half-yrly paymts on the —— day of —— & the —— day of ——, whof the first is to be made on the —— day of —— next, or, as to each such paymt of ppal & intt, shl make the same within *twenty-one* days after the day so appted for the paymt thof resply, & if the sd, *mtgor,* his hrs, exs, ads, & assns, shl at all times pform, &c., *as in form* VII., then the sd, *mtgee,* his exs, ads, or assns, shl accept paymt of the sd sum of £——, *the ppal,* & the intt thron by the instalmts at the times & in mner afsd.

Power to mortgagor to anticipate the instalments.

XI. PROVD ALWAYS, that the sd, *mtgor,* his hrs, exs, ads, or assns, shl be at liberty at any time or times, upon givg at least one calr month's notice in writg of his or their intention so to do, to pay off all or any pt of the ppal moys for the time being owing on this secy, so that not less than £—— be so pd off at any one time, & that upon any paymt of ppal the intt on the whole ppal sum for the time being owing be fully pd, & that such partial payment by anticipon shl not interfere with the paymt in regular course of the instalmts of ppal subseqtly payable psuant to the provon hinbfe in that behalf contd, but shl only have the effect of acceleratg the ultimate paymt of the moys remaing owing on this secy.

Proviso capitalizing interest in arrear.

XII. PROVD, &c., that if & so often as any intt due under the covt hinbfe contd or this psnt provon shl be in arrear for *twenty-one* days after the day hby appted for the paymt thof, such intt shl be treated as an accretion to the capital moys hby secd as on the day on wch the same ought to have been pd, & shl thenceforth bear intt payable at the rate & on the days afsd & this secy shl extend to such capitalized intt in all respts.

(b) See p. 11, note (e).

Proviso in mortgage of reversion that principal shall not be called in, and interest shall accumulate, during life of tenant for life.

Variation where there are prior mortgages.

XIII. PROVD ALWAYS, & it is hby agrd that durg the life of the sd B. [in case none of the sd prior mtges shd be enforced by sale or foreclosure in the interval] the sd ppal sum of £—— hby secd shl not nor shl any pt thof be called in & [in the like case] the intt accrug upon the sd sum of £—— durg the life of the sd B. shl be forborne & the paymt thof shl not be required until the death of the said B. [or until one of the sd prior mtges shl be enforced as afsd]: AND it is further exply agrd & decld that all intt wch shl be forborne under or by virtue of the provo lastly hinbfe contd shl accumulate, togr with the intt resultg thfrom, in the way of compound intt by being added to capital, & shl remain & be chgeable upon all & singr the premes hby mtged, & shl to all intents & pposes be within the scope & operon of the psnt secy, includg all costs, powers, & provons hrin contd, & shl be recoverable agst the sd A. his hrs, exs, & ads psonally, & remain & be chged upon & payable out of premes hby mtged.

Covenant by mortgagee to make advances to mortgagor (*d*).

Variations where the advances are made for building purposes.

XIV. AND THE sd, *mtgee*, doth hby covt with the sd, *mtgor*, that the sd, *mtgee*, [his exs, ads, or assns] will from time to time [subjt as hinafter mentd] advce to the sd, *mtgor* (*c*), such further sum or sums of moy as he [or they] may from time to time require, not exceedg in the whole with the sd sum of £—— now advanced the sum of £——, by monthly instalmts, one such instalmt to be payable on the —— day of each calr month, & the first of such instalmts to be pd on the —— day of —— next [& no such instalmt to exceed four-fifths of the prime cost of the works exted by the sd, *mtgor*, his exs or ads, durg the then precdg calr month accdg to the value of the

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(*c*) See *ante*, p. 3, note. As to the rights of the parties under such a covenant, and of an assignee of the benefit of the covenant, see *Western, &c., Co.* v. *West*, [1892] 1 Ch. 271. As to future advances on registered land, see L. T. R. 108, *post*, p. 79, note. The form therein referred to only contemplates advances made by the original mortgagee to the original mortgagor. In cases where advances are intended to be made by the representatives of the mortgagee or to the heirs or assigns of the mortgagor, it will be convenient to take a mortgage on the same form as if the land was not registered, and to take a registered transfer of the land.

(*d*) If the advances are to be made to the representatives of the mortgagor, say, "or his hrs;" for leaseholds, say, "exs, ads," if the advances are to be made to the assigns of the mortgagor, say, "his hrs, [exs, ads] or assns."

same, as computed by Mr. ——, or failg him by Mr. —— (*a*); AND IT IS HBY AGRD that the reasble chges of the sd surveyor shl be borne by the sd, *mtgor*, his hrs, exs, or ads, & may be deducted from the sd advces hinbfe covted to be made to the sd, *mtgor*, (*b*) :] PROVD ALWAYS, that in case the sd, *mtgor*, [or the pson or psons for the time being entled to the benefit of the covt hinbfe contd for making the sd advces] shl become subjt to the bkptcy laws, or make any arrangemt or composon with his [or their] creditors, or shl have any pt of his [or their] este taken in exon [or shl not make such progress with the sd bldgs & works as will enable them to be completed within the time & in the mner hinbfe proved], [or shl assn or pt with the benefit of this psnt covt (*c*)] or in case any covt hrin expd or implied by the sd, *mtgor*, [or the pson or psons, &c., *as above*], & on his [or their] pt to be pformed or observed other than the covt for the paymt of the sd ppal sum of £—— with intt thron shl not have been pformed & observed, then & in any such case, the obligon of the sd, *mtgee*, [his exs, ads, or assns] to make or continue such advces as afsd shl cease: PROVD ALSO, & it is hby agrd that this secy shl extend to all sums wch may be advced by the sd, *mtgee*, [his exs, ads, or assns] to or on acct of the sd, *mtgor*, [his hrs, [exs, ads], or assns] although the obligon to make or continue the sd advces may have ceased. [PROVD ADWAYS that no advces are to be made under this covt after the death of the sd *mtgee* (*d*)].

Declaration that sums advanced by different mortgagees are to be rateably secured.

XV. PROVD ALWAYS, & it is hby agrd that the sd sums of £—— & £——, & the intt thron resply shl have no preferce or priority the one over the other, but shl be payable rateably & eqlly out of any moys wch shl be reced, recovered, or realised by the sd, *mtgees*, or their respive exs, ads, or assns, or any of them, under or by virtue of these psnts, whether on a sale of

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(*a*) In the absence of a contract between the mortgagee and the surveyor, the latter is not liable to the former for statements which are untrue, but not fraudulent in the certificate. *Le Lievre* v. *Gould*, [1893] 1 Q. B. 491.

(*b*) See note (*d*), preceding page.

(*c*) If advances are to be made to the assigns of the mortgagor the words in this bracket will be omitted.

(*d*) These words ought to be inserted if advances are not to be made by the executors and administrators of the mortgagee.

the sd mtged premes or by action on any of the covts hinbfe contd or orwise.

XVI. PROVD ALWAYS, & it is hby agrd & decld betn & by the sd, *mtgees or transferees*, that the sd sum of £—— so pd by them as afsd was (*f*) moy belonging to them on a jt acct.

Joint account clause (*e*).

XVII. PROVD ALWAYS, & it is hby agrd that as betn the sd, *ppal*, his hrs, exs, & ads, on the one pt, & the sd, *surety*, his hrs, exs, & ads, & the sd mtged premes, on the other pt, the sd, *ppal*, his hrs, exs, & ads, shl be primarily liable to the paymt of the moys hby secd.

Proviso as to primary liability between principal and surety.

XVIII. PROVD ALWAYS, & it is hby agrd that as betn the sd, *ppal*, his hrs, exs, & ads, & the sd mtged premes, on the one pt, & the sd, *surety*, his hrs, exs, & ads, on the other pt, the sd, *ppal*, his hrs, exs, & ads, & the sd mtged premes, shall be primarily liable to the paymt of the moys hby secd.

Ditto.

XIX. PROVD ALSO, & it is hby agrd & decld that the provon hinbfe contd with respt to the primary liability to the paymt of the moys hby secd shl not affect the mtgees, his exs, ads, or assns [*or* the pson or psons for the time being entitled to the same moys, or so much thof as shl remain unpd, or in anywise preclude him, them, or any of them, from enforcg or havg recourse to all or any remedies or means for recoverg paymt thof wch may be available under these psnts or orwise at such times & in such order & mner as he or they shl think fit.]

Proviso that mortgagee is not to be affected by declaration as to primary incidence of debt.

XX. PROVD ALWAYS, & it is hby agrd that, although as betn the sd, *ppal debtor*, & the sd, *surety*, the sd, *surety*, is only a surety for the sd, *ppal*, yet as betn the sd, *surety*, & the sd, *mtgee*, the sd, *surety*, shl be considered as a ppal debtor for all

Proviso that surety shall be liable as a principal debtor (*g*).

(*e*) By the effect of the C. A., 1881, ss. 60, 61, the statement that the advance is made or intended to be made on a joint account is sufficient to make the right to the mortgage-money survive. The clause, except the part relating to further advances, may be omitted altogether if the fact that the advance is on joint account appears elsewhere in the deed. The joint account clause will not affect the rights of the mortgagees *inter se* if in fact they are entitled to the money as tenants in common, *Re Jackson*, 34 Ch. D. 732; *Steeds* v. *Steeds*, 22 Q. B. D. 537. The clause is effectual even if the mortgage is (according to the usual practice) not executed by the mortgagees. Elphin. Introd. 152.

Joint account clause.

(*f*) For further advances, add here :—" & that any further sum or sums wch may be hrafter adveed or pd by them [or the survors of them] on the secy of these psnts will be."

Variation for further advances.

(*g*) The rule which this clause is intended to exclude is that any alteration of the contract between the mortgagee and the principal debtor behind the back

Alteration of contract

the ppal moys & intt hby secd, so that the sd, *surety*, his hrs, exs, or ads, shl not be reled by time being given to the sd, *ppal*, his hrs, exs, or ads, or by any other varion in the provons of these psnts, or any other thing whatsr whby the sd, *surety*, his hrs, exs, or ads, as a surety or sureties only, wd have been so reled.

Proviso limiting liability of surety.

XXI. PROVD ALWAYS, that the sd, *surety*, his hrs, exs, ads, or assns, shl not be liable under the covt or covts hinbfe contd to pay a larger sum in the whole in respt of ppal money & intt taken togr than the sum of £—— with intt on such sum at the rate afsd from the time of demand of payment being made on the sd, *surety*, his hrs, exs, or ads, until payment.

Trustees not to be personally liable.

XXII. PROVD ALWAYS, that the sd sum of £—— hby secd & the intt thron shl not constitute a debt from, & shl not be recoverable agst the sd, *trees*, or eir or any of them, their or eir or any of their hrs, exs, or ads personally.

Covenant as to a guarantee policy.

XXIII. THD SD *mtgor* hby covts with the sd, *mtgee*, that the sd, *mtgor*, will durg the continuce of this secy duly keep up the sd poly intd to be grted by the Insce Co, & produce the rects for the prems to the sd, *mtgee*, his exs, ads, or assns, on demand, & that in case of his or their making default in that behalf it shl be lful for the sd, *mtgee*, his exs, ads, or assns, to pay all prems & moys from time to time payable for keepg on foot the sd poly, & also at any time or times to effect & to pay all prems & moys for effectg & keeping on foot any other similar poly or pols eir in the same or any other office in substiton for the sd origl poly in such mner as he or they may think fit, & that all moys expended by him or them for keepg on foot the sd origl or any substituted poly as afsd, or for effectg any such substituted poly with intt thron at the rate of —— p.c. p.a. from the time when the same shl be expended, shl be repd by the sd, *mtgor*, his hrs, exs, ads, or assns, to the sd, *mtgee*, his exs, ads, or assns, on demand & in the meantime shl be a chge on all the sd premes hby mtged.

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releasing surety.

of the surety not only discharges the surety from all personal liability if he has pledged his personal credit by bond or covenant (*Bolton* v. *Buckenham*, [1891] 1 Q. B. 278); but also, if he has by the same contract pledged his goods or charged his lands as security for the same debt, releases the goods or lands so pledged or charged by the surety (*Bolton* v. *Salmon*, [1891] 2 Ch. 48). See further as to this doctrine, 2 Dav. Pt. 2, p. 502, note, and the notes to *Rees* v. *Berrington*, 2 W. & T., L. C. Eq. 568.

Power of attorney in assignment of debt or chose in action (*a*).

XXIV. AND THE sd, *assnor*, doth hby irrevocably empower the sd, *assnee*, his exs, ads, & assns, to demand, sue for, recover, rece, & give valid rects for the sd sum of £——, *the ppal*, & all intt [due &] to become due for the same, in the name or names of the sd, *assnor*, his exs or ads, & for the pposes afsd, or any of them to exte & do all such instrmts & things as shl be deemed necy or expedient.

Receipt clause in mortgage of policy (*b*).

XXV. PROVD ALWAYS, & it is hby agrd that the rect of the sd, *mtgee*, his exs, ads, or assns, for any moys [stks, funds, shares, or secs, or other psonal este] pd to him or them in respt of the sd poly hby mtged, shl effectually dischge the assurce socy, *or*,

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As to inserting power of attorney in mortgage of chose in action.

(*a*) As s. 25, sub-s. 6 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), making a chose in action assignable, where the assignment is "absolute . . . . (not purporting to be by way of charge only)," has been held to apply to an assignment upon trust to receive the money, and after payment thereout of a sum owing to the assignee to pay the surplus to the assignor, or to an assignment with a proviso for redemption (*Burlinson* v. *Hall*, 12 Q. B. D. 347, and *Tancred* v. *Delagoa Bay, &c., Co.*, 23 Q. B. D. 239, *Durham* v. *Robertson*, [1898] 1 Q. B. 765), or even to an assignment upon trust for the assignor during his life and after his death on other trusts (*Walker* v. *Bradford Old Bank*, 12 Q. B. D. 511), or upon trust to hold the proceeds of the chose in action for the assignor absolutely (*Comfort* v. *Betts*, [1891] 1 Q. B. 737), it is no longer strictly necessary in mortgages of legal any more than in those of equitable choses in action to insert a power of attorney in order to enable the assignee to sue in his own name; so that the clause in the text can rarely be required. Notice in writing to the debtor is necessary to make the assignment effectual under the Act. The case of policies is distinct, as they are made legally assignable by the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144). As to the effect of a condition in a policy against assignment, see *Re Turcan*, 40 Ch. D. 5.

A power of attorney given for valuable consideration may be made irrevocable under the C. A., 1882, s. 8, see p. 30, note.

Power for mortgagee to give receipts, &c., under C. A., 1881.

(*b*) The C. A., 1881, s. 22, makes the receipt of a mortgagee who has a power of sale under the Act (*i.e.*, a mortgagee whose mortgage is made by deed after 1881) a sufficient discharge for any money or securities (including stocks, funds and shares, see s. 2. xiv.) comprised in or arising under his mortgage, and the person or corporation transferring the same is not concerned to inquire whether any money remains due under the mortgage; and the money received under the mortgage or from the proceeds of the securities (after payment of the costs of recovering and receiving and converting the same) is applicable in the same manner as the proceeds of a sale under the statutory power in s. 19. The power of selling securities received by the mortgagee under his mortgage is not expressly given by s. 22, being left to depend on the general power of sale in s. 19, as to which see p. 20, note. These statutory provisions, unless it is desired in any way to vary them, appear to cover everything contained in clauses XXV. and XXVI. in the text, which may therefore in general be omitted; but where the loan is to continue for a term of years, some provision may be required for the event of a policy or reversion falling in before the expiration of the term; for form, see below, p. 40, note (*c*). The section protects trustees who pay to a mortgagee moneys representing all the interest mortgaged, but "trees or tree," or psons or pson payg the same thfrom, & from being concerned to see to the applicon or being answerable for the loss or misapplicon thof, & that the assurce socy, *or*, "trees or tree," or psons or pson, paying the same, shl not be bound or concerned to inquire whether any default has been made in paymt of any ppal moys or intt hby secd, or whether any moy remains owing on this secy, or orwise as to the propriety of such paymt as afsd.

Trusts of moneys received in respect of policy (*a*).

XXVI. AND IT IS HBY AGRD, that if the sd, *mtgee*, his exs, ads, or assns, shl rece any moys in respt of the sd poly hby mtged, he or they shl apply the same in the first place in or towards the paymt or dischge of all costs & expses incurred in obtaing paymt of & receivg the same (*b*), or in or about the exon of the trusts or powers of these psnts or orwise in relon to the premes: AND in the next place in or towards satisfon of the moys for the time being owing on the secy of these psnts (*c*), & then pay the surplus (if any) thof unto the sd, *mtgor*, his exs, ads, or assns.

Covenant to keep up life policy (*d*).

XXVII. AND THE sd, *mtgor*, hby covts with the sd, *mtgee*, that the sd poly of assurce hby mtged shl not become void or voidable, & that he, the sd, *mtgor*, will not do or suffer anything

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does not render it incumbent on them to pay to him more than is due to him, *Re Bell*, [1896] 1 Ch. 1; *Hockey* v. *Western*, [1898] 1 Ch. 350.

(*a*) See note (*b*) preceding page.

Variation for reversionary interest.

(*b*) For a reversionary interest, say, "shl rece any moys, stks, funds, shares or secs in respt of the sd premes hby mtged, he or they shl by & out of the same, or the proceeds of the sale of the sd stks, funds, shares, or secs (wch he is or they are hby authorised to effect) in the first place, reimburse, &c., incurred in obtaing paymt or transfer of, & receivg & convertg the same," &c.; and subsequently after "pay," add "or transfer."

Variations where mortgage is for a term.

(*c*) Where the mortgage is to continue for a term of years proceed as follows:—"with full power to retain in hand a sufft sum or fund to provide for the ultimate satisfon of any moys hby secd wch shl not for the time being be immedly payable, & to apply the same accdly (any fund so retained if not already invested to be invested in Government stks or secs & to accumulate until the same shl be wanted for the ppose afsd) & then pay or transfer the surplus (if any) of the sd moys and premes (includg the ultimate surplus of any such accumulated fund as afsd) unto the sd, *mtgor*, his exs, ads, or assns."

(*d*) The variations required for several policies are obvious.

whby the sd, *mtgee*, his exs, ads, or assns, may be prevented from receivg any of the moys to become payable thrunder or any pt thof, & that if the said poly has or shl become voidable, he the sd, *mtgor*, will immedly thrupon at his own cost do all things necy for restorg or keepg on foot the same: AND THAT if the sd poly, or any new poly or pols to be effected as hinafter is mentd, has or shl become void, the sd, *mtgor*, will immedly thrupon at his own cost effect or enable the sd, *mtgee*, his exs, ads, or assns, to effect a new poly or pols on his life in his or their name or names, in such sum or sums as wd have been payable under the poly or pols wch shl have become void if the sd, *mtgor*, had died: AND THAT every such substituted poly & the moys to become payable under the same shl be subjt to this secy, & the power of sale & other powers, trusts, and provons contd in or incident to these psnts in relon to the sd origl poly & the moys to become payable thrunder: AND FURTHER THAT HE the sd, *mtgor*, will durg the continuce of this secy duly & punctually pay the annl prem or prems & other sum or sums of moy (if any) necy for keepg on foot the sd origl poly, & any substituted poly or pols, when the same shl become due or within one week thrafter, & will forthwith deliver the rect for every such paymt to the sd, *mtgee*, his exs, ads, or assns: AND THAT if the sd, *mtgor*, shl at any time neglect or refuse to make the paymts afsd, or any of them, it shl be lful for the sd, *mtgee*, his exs, ads, or assns, to pay the same: AND THAT all moys & expses wch shl be pd or incurred by him or them in keepg on foot the sd origl poly, or in effectg or keepg on foot any such substituted poly or pols as afsd or orwise in relon to the premes, with intt for the same at the rate of —— p.c., p.a., from the time or respive times of the same havg been pd or expended, shl be repd to him or them by the sd, *mtgor*, his hrs, exs, or ads, on demand: AND until repaymt shl be charged upon (*e*) the sd premes hby mtged.

To renew.

New policies to be subject to security.

To pay premiums.

Power to mortgagee to pay premiums on mortgagor's default.

That the same shall be repaid by mortgagor,

and in the meantime be a charge.

XXVIII. AND THE *mtgor* hby covts with the *mtgee* that he the *mtgor* will duly pay the prems & moys payable for keepg up the sd poly or any substituted poly or pols, & produce the rects

The same. Short form.

(*e*) Sometimes a lien on a policy for premiums paid can be acquired by a stranger or by a part owner of the policy, see *Re Leslie*, 23 Ch. D. 552; cf. *Falcke* v. *Scottish Imperial Insce Co.*, 34 Ch. D. 234, and *Re Earl of Winchilsea's Policy*, 39 Ch. D. 168.

for the same to the *mtgee* on demand, & will not do or suffer anythg whby the sd poly may become voidable or void : AND if the same shl become voidable or void, will immedly, at his own cost, do all things necy for restorg or renewg the same : AND THAT every such substituted poly or pols shl be subjt in all respts to this secy : AND THAT in case of default on the pt of the *mtgor* in the pformce of any of his covts in relon to the sd poly or pols, the *mtgee* may at the cost of the *mtgor* do what is necy to make good such default, & that any moys expended by him in that behalf with intt at the same at the rate of —— p.c., p.a. from the time of the paymt of the same shl be repd by the *mtgor* on demand, & in the meantime shl be a chge on the sd mtged premes.

Covenant by mortgagor to insure against fire, and power to mortgagee to insure on default (*b*).

XXIX. AND THE sd, *mtgor*, hby covts with the sd, *mtgee*, that he the sd, *mtgor*, his hrs, exs, ads, or assns, will durg the continuce of the psnt secy keep the sd messes, bldgs (*a*), & premes comprd in or subjt to this secy, & all messes, bldgs, &

(*a*) Add if required "machy." The form in the text applies to *existing* messuages, &c., described in the parcels. It may be better in some cases to say, "all messes, bldgs & premes for the time being comprd, &c."

Provisions of the C. A., 1881, as to insurance.

(*b*) The C. A., 1881, s. 19 (i) (ii) (superseding Lord Cranworth's Act, 23 & 24 Vict. c. 145, in this respect), gives to a mortgagee, where the mortgage is by deed and made after the commencement of the Act, a power at any time to insure and keep insured against fire any building, effects, or property of an insurable nature comprised in the mortgage, and to add the premiums to the mortgage debt, so as to carry interest at the same rate. By s. 23 (1) the amount of an insurance so effected by the mortgagee is not to exceed the amount specified in the mortgage, or if no amount is specified is not to exceed two-thirds of the value of the property ; and (2) he is not to effect an insurance where there is a declaration in the mortgage that no insurance is required, or where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage, or where the mortgage contains no stipulation as to insurance, and the mortgagor insures to the amount in which the mortgagee is authorised by the Act to insure. By s. 23 (3) the money received on an insurance, whether effected under the mortgage or the Act, is, if the mortgagee so requires, to be applied in making good the loss or damage ; but (4) the mortgagee may (without prejudice to any obligation to the contrary imposed by law or special contract) require the money to be applied in discharge of the mortgage. These provisions may, by s. 19 (2, 3), be varied, extended, or excluded by the mortgage and are by the L. T. A., 1897, s. 9 (2), applied to registered charges. See as to the previous law, 2 Dav. Prec., pt. 2, pp. 54, *et seq.*

Registered charges.

Remarks on the statutory power.

It should be borne in mind that the Act does not apply unless the mortgage is by deed. The statutory provisions, though less full in some points of detail than the clause in the text, appear to be sufficiently protective to the mortgagee to be relied on in ordinary cases ; but as the Act only gives the mortgagee power to insure in case of default of the mortgagor, and does not imply any ppty wch may from time to time be so comprd or subjt (*c*) insured agst loss or damage by fire (*d*) in the sum of £—— at the least [wch shl be distributed betn the sevl houses & bldgs hby mtged in mner provd in the schdle hto or as near thto as may be], *or*, "to the full value thof," *or*, "in not less than *three-fourths* of the value thof," in the —— Insce Co, or in some other insce office of repute, to be approved of in writg from time to time by the sd, *mtgee*, his exs, ads, or assns, [in the name or names of the sd, *mtgee*, his exs, ads, or assns, *or*, "in the jt names of the sd, *mtgor*, his hrs, &c., & the sd, *mtgee*, his exs, &c."] (*e*), & will duly & punctually pay all prems & moys necy for effectg & keepg up the sd insce when the same shl become

Variations where the covenant extends to repairs.

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covenant by the mortgagor to insure or produce the policy or receipts for the premiums, the mortgagee might be in a difficulty for want of knowledge whether there has been a default, and the statutory power would generally not fit the case of leaseholds where the lease contains a covenant to insure; express provisions in lieu of or in addition to those in the statute will therefore sometimes be required. See the next form; and as the clause in the text is short, it is generally better and more convenient to insert it in full instead of relying on the Act.

The provisions as to insurance against fire do not alter the *ad valorem* stamp on the mortgage: Stamp Act, 1891, s. 88 (3). It has hitherto not been the practice to stamp a mortgage with extra *ad valorem* duty on execution owing to its containing a provision charging the costs of repairs done by the mortgagee on the mortgaged property. But the Board of Inland Revenue have raised a claim that this should be done. See 39 Sol. J. 632.

(*c*) Where the covenant extends to repairs, add here,—"in good & substantial repair, & also." In case of machinery, add after "repair," "& in perfect workg order."

(*d*) In the case of leaseholds, where the lessee is under covenant to insure, it will generally be sufficient to substitute for what follows, "in such a state of repair & insce as is required by the covts of the sd indre of lease," adding the covenant to produce the policy and receipts, and making consequential alterations in the rest of the form.

Variations for leaseholds.

(*e*) If so intended insert here, instead of the subsequent covenant to produce the policy:—

"AND WILL immedly after every such poly shl have been effected, or after the exon of these prsnts, if the same shl have been previously effected, deposit the sd poly with the sd, *mtgee*, his exs, ads, or assns;" and in lieu of the covenant to produce the receipts of the premiums, say, "AND WILL forthwith deliver the rect for every such paymt to the sd, *mtgee*, &c."; and the power of the mortgagee to insure on default should extend to a default, "in depositg any such poly or deliverg any such rect as afsd."

Variations where policy deposited with mortgagee.

due or within one week thrafter, & will on demand produce to the sd, *mtgee*, his exs, ads, or assns, the poly or pols of such insce, & the rect for every such paymt: AND THAT if default shl at any time be made by the sd, *mtgor*, his hrs, exs, ads, or assns, in effectg or keepg up such insce as afsd (*a*), or in producg any such poly or rect to the sd, *mtgee*, his exs, ads, or assns, on demand, it shl be lful for but not obligatory on the sd, *mtgee*, his exs, ads, or assns, to insure & keep insured the sd premes or any pt thof in any sum not exceedg £—— (*b*): AND THAT all moys expended by him or them for such ppose, togr with intt thron at the rate of —— p.c. p.a. from the time of the same having been expended, shl on demand be repd to him or them by the sd, *mtgor*, his hrs, exs, ads, or assns, & until such repaymt shl be a chge upon all the sd premes hby mtged (*c*).

(*a*) Add here if appropriate, "or in keepg the sd premes or any pt thof in good & substantial repair," *for machinery*, "& in perfect workg order."

(*b*) Add here, if appropriate, "*or* (*as the case may require*), to repair, & keep in repair the same, *for machinery*, & 'put the same into perfect working order,' & to enter upon the sd mtged premes for that ppose."

Special provision as to application of insurance moneys.

(*c*) The following may be added, if appropriate:—"AND THAT all moys wch may be reced by virtue of any such poly shl be applied in makg good the loss or damage, *or*, 'and that all moys reced by virtue of any such poly in respt of the destron or damage by fire of any houses or bldgs thby insured shl be applied in makg good the loss or damage, & any moys reced in respt of the destron or damage by fire of any ppty other than houses or bldgs shl eir be applied in makg good the loss or damage, or if so required, by notice in writg given by the sd, *mtgee*, his exs, ads, or assns, to the sd, *mtgor*, his hrs, exs, ads, or assns, or left on the sd mtged premes, within —— days after the occurrce of such loss or damage, shl be applied in or towards the dischge of the moys owing on this secy.'"

As to application of insurance money.

See as to the application of the insurance money, the C. A., 1881, s. 23 (3, 4); and as to the previous law, see, as to buildings, *Ex parte Gorely*, 4 De G. J. & S. 477 (*Qu.*, however, whether that case is good law, see above, Vol. I., p. 277, note); and as to chattels, *Lees* v. *Whiteley*, L. R. 2 Eq. 143. The provision giving the mortgagee the option of applying the insurance moneys in discharge of the mortgage may operate somewhat hardly on the mortgagor, and it may be desirable in some cases to exclude the statutory provision as to this.

XXX. AND THE sd, *mtgor*, doth hby, &c., *covt to insure to the end of the covt to produce rects as in last form:* AND that if the sd, *mtgor*, his hrs, exs, ads, or assns, shl on demand at any time refuse or neglect to produce any such poly or rect to the sd, *mtgee*, his exs, ads, or assns, he or they shl be entitled to assume that the sd premes are not insured in accordce with the covt hinbfe contd, & to exercise if he or they think fit (but witht being under any obligon so to do) all the powers and have all the rts conferred by statute in that behalf.

Provisions as to insurance supplemental to the statutory power (*d*).

XXXI. AND THE sd, *mtgor*, hby covts with the sd, *mtgee*, that he the sd, *mtgor*, his exs, ads, or assns, will from time to time durg the continuce of this psnt secy, at his or their own cost, procure the psnt lease (*e*) of the sd leasehd premes hby mtged, to be renewed psuant to the covt in that behalf contd in the sd psnt lease (*f*); the sd, *mtgee*, his exs, ads, or assns, doing or concurrg in all such acts as may be necy or pper for obtaining such renewals: AND that the sd, *mtgor*, his exs, ads, or assns, will immedly after obtaing such renewed lease, assn the same & the premes thrin comprd to the sd, *mtgee*, his exs, ads, & assns, subjt to such equity of redmon as shl then be subsistg by virtue of these psnts, & in the meantime will stand possed of the renewed lease in trust for the sd, *mtgee*, his exs, ads, & assns, for securg the moys hby secd: AND FURTHER, that if the sd, *mtgor*, his exs, ads, or assns, shl refuse or neglect to procure the renewal of the sd lease as afsd, & to pay the fines, fees, & costs attendg the renewal thof, it shl be lful for the sd, *mtgee*, his exs, ads, or assns, to obtain such renewal in his or their own name or names, or orwise: AND that all moys expended by him or them in or about any such renewal, with intt thron at the rate of —— p.c. p.a. from the time or respive times of the expenditure thof, shl be repd to him or them by the sd, *mtgor*, his hrs, exs, ads, or assns, on demand, & in the meantime shl be a chge upon the renewed lease & the ppty thrin comprd [& the sd other premes hby mtged].

Covenant for renewal of lease.

(*d*) See p. 42, note (*b*).

(*e*) If the lease contains a covenant for perpetual renewal, add here.—"& any renewed lease or leases wch may be hrafter obtained."

Variation for renewable lease.

(*f*) In the case referred to in note (*e*), add here:—"or to be contd in any future lease of the sd premes."

Power of leasing for twenty-one years to be exercised by mortgagor till mortgagee enters into possession and afterwards by mortgagee (*a*).

XXXII. PROVD ALWAYS, & it is hby agrd that it shl be lful for the sd, *mtgor,* his hrs, *for leasehds,* " exs, ads," & assns, from time to time to demise the whole or any pt or pts of the sd premes hby mtged, wch shl not have been sold or entd into posson of by the sd, *mtgee,* his exs, ads, or assns (whether psonally or by a recer apptd by him or them or by order of the Ct), & the equity of redmon whof shl not have been foreclosed, & for the sd, *mtgee,* his exs, ads, or assns, from time to time to demise the whole or any pt or pts of the sd mtged premes, wch he or they shl have entd into posson of (whether psonally or by

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Provisions of the C. A., 1881, giving leasing powers to mortgagors and mortgagees.

(*a*) The C. A., 1881, s. 18, gives to a mortgagor or mortgagee, which respectively include the registered proprietor of land and of a charge, C. A., 1881, s. 2 (vi), in a mortgage made after the commencement of the Act, while respectively in possession, power to grant agricultural or occupation leases for 21 years, and building leases for 99 years, to take effect not later than 12 months after their date, at the best rent, without taking a fine and subject to the restrictions usually inserted in leasing powers ; leases granted by a mortgagor in possession being binding on all the incumbrancers (who are bound thereby as though they were parties thereto ; *Wilson* v. *Queen's Club*, [1891] 3 Ch. 522), and those granted by a mortgagee in possession being binding on all incumbrancers and on the mortgagor and all persons interested in the equity of redemption (see sub-ss. 1–9, and the definition of "mortgagor" in s. 2). In a building lease, a peppercorn rent, or a nominal or other rent less than the ultimate rent may be reserved for the first five years (sub-s. 10). The counterpart of a lease granted by the mortgagor is to be delivered by him to the first mortgagee within a month (sub-s. 11). The statutory power may be excluded or varied ; or further or other leasing powers may be given by the mortgage, which are to be exerciseable (unless otherwise expressed) with the like incidents, &c., as if conferred by the Act (sub-ss. 13, 14). A mortgagee on giving notice to the tenant and going into possession is entitled to enforce the covenants and conditions of a lease granted under his statutory power by the mortgagor when in possession, in the same manner as if the mortgagee had been a party to such lease ; and such right cannot be affected by any collateral agreement between the lessor and the lessee (*Municipal, &c., Society* v. *Smith*, 22 Q. B. D. 70). But where a lease is granted by the mortgagor as owner of the equity of redemption, and not under the statutory or an express power, the mortgagee would have no such right ; and the mere fact of a tenant of a mortgagor continuing in possession after notice to pay rent to the mortgagee is not evidence of an agreement that he should become tenant to the mortgagee ; *Towerson* v. *Jackson*, [1891] 2 Q. B. 484. Under s. 11 the obligation of the lessor's covenants having reference to the subject-matter of the lease would be annexed to the legal reversion, so far as the mortgagor has power to bind the reversion ; which, probably, he is not by s. 18, sub-s. 16, empowered to do, so as to impose on the mortgagee the obligation of any onerous covenant entered into by him.

Remarks on the Act.

These statutory powers of mortgagors are fuller in their details than the form in the text (besides extending to building leases), and appear to be adequate for ordinary purposes, and also sufficiently protective both to the mortgagor and mortgagee ; and (though the practice of excluding them a recer), for any term of yrs not exceedg twenty-one yrs, to take effect in posson or within six calr months from the date of the lease, upon such terms & condons as may be deemed expedient, so as there be reserved in every such lease the best yrly rent or rents to be incident to the revon that can be reasbly obtd witht takg anythg in the nature of a fine or prem (*b*), & so as there be contd in every such lease a condon of re-entry for non-paymt, within a reasble time to be thrin specified, of the rent or rents thby reserved : AND the sd, *mtgor*, hby covts with the sd, *mtgee*, that he the sd, *mtgor*, his hrs, *for leaschds*, "exs, ads," or assns, will deliver the counterpt (if any) of every such lease to him or them forthwith after the exon thof by the lessee or lessees (*c*).

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prevails to a considerable extent) it is conceived they may be safely left to operate, so far at any rate as regards the power to grant ordinary rack-rent leases for 21 years, unless there is some special reason for their exclusion or limitation. In fact the exclusion of the statutory power without substituting an express power may be to the positive disadvantage of the mortgagee, since if voidable leases are granted, as they frequently would be, without his concurrence, and he is willing (as would generally be the case) to confirm them, he would be in a less favourable position as regards enforcing the lessee's covenants, &c., than if the leases had been validly granted under a power (see an instance in *Towerson* v. *Jackson*, *ubi sup.*). It would appear, however, that the expression "mortgagee in possession" as used in the Act would not apply to a mortgagee in possession by a receiver appointed by him under the ordinary express or statutory powers, as the possession of the receiver is that of the mortgagor; and it might be proper to make provision for this case, as is done in the form in the text. Where the property comprises an important building estate, it may be desirable to give special powers, superseding or supplemental to the statutory powers, see note (*c*), *infra*. Exception has been taken to the provision in the Act as to reserving a peppercorn rent during the first five years in a building lease; this is an ordinary power, and can scarcely prejudice the mortgagee; but if desired it may be restricted. Sometimes the mortgagee is willing to give leasing powers to the mortgagor personally, but not to persons claiming under him; the statutory powers may be readily confined in this respect by a short clause. There does not appear to be anything in the section to prevent its applying to copyholds, subject to the custom of the manor, or to leaseholds, subject to the restrictions of the superior lease (see sub-s. 15).

(*b*) The form may be shortened by substituting "at rack rent" for the above words as to rent. It is not considered necessary that it should be made a condition of the validity of the lease that the lessee should execute a counterpart.

(*c*) Occasionally (*e.g.*, in the case of building leases or public-house property) it is desired to give power (requiring in the case of the mortgagor to be carefully guarded) to grant leases at a fine, as in the following form :—

Clause authorizing leases at fines.

"PROVD ALWAYS, &c., that the statutory power of leasing conferred on the sd, *mtgor*, his hrs & assns, & on the sd, *mtgee*, Clause restrictive of statutory powers of leasing.

XXXIII. PROVD ALWAYS & it is hby agrd that the sd, *mtgor*, his hrs, *for leasehds*, "exs, ads," or assns, shl not exercise the statutory powers of leasg vested in him or them by virtue of

his exs, &c. (*as the case may be*), in relon to the sd mtged premes shl be extended so as to authorise the grt of leases for any term not being less than —— yrs nor more than —— yrs, to take effect in posson not later than six calr months from the date of the lease, at the best yrly rent or rents that can be reasbly obtained havg regard to any fine or prem wch may be taken by the lessor or lessors (& for wch his or their rect shl be a sufft dischge), but so nevs that a yrly ground rent of not less than £——, to be incident to the immediate revon, shl be reserved during the whole term of such lease in respt of each house & the plot of ground demised thwith, & so that the frontage of each house & the plot of ground demised thrwith towards —— Road shl not exceed —— feet, and that such plot of ground inclusive of the site of the house thron shl not exceed —— yards in area unless the sd, *mtgee*, his exs, &c., shl give his or their consent in writg to any modificon of such restrons as to rent, frontage & area in any parlar case."

The following is also sometimes useful in the case of building leases :—

Clause authorizing apportionment of condition of re-entry.

"PROVD that in case more than one house shl be comprd in the same lease, a septe ground rent (not being less than the maximum rent obtainable) may be reserved in respt of each house, & it may be provd that the non-paymt of the ground rent or the breach of any of the covts or condons of the lease in respt of any one house shl not authorise the re-entry of the lessor into or upon the other house or houses comprd thrin, but only into or upon the parlar house in respt whof such non-paymt or breach shl have happened, to the intent that each house shl be held septely from & independently of the others."

The following is sometimes useful (*e.g.*, in the case of public-houses) :—

Power to sell fixtures, &c., to lessee.

"PROVD ALSO, &c., that it shl be lful for the sd, *mtgor*, his hrs, or assns upon or after the grantg of any such lease as afsd, to sell & dispose of to the lessee or lessees all or any of the fixtures (being of the description usually known or regarded as tenant's or trade fixtures) or fittings in or upon the premes comprd in such lease free from the secy hby created, & to rece these psnts witht the consent in writg of the sd, *mtgee,* his exs, ads, or assns : [PROVD also that no lessee or intendg lessee shl be concerned to inquire whether such consent has been given, & that every lease or agrmt for a lease exted by the sd, *mtgor,* his hrs, *or for leasehds,* " exs, ads," or assns, shl as regards the safety & proton of the lessee or intendg lessee be deemed to have been exted with such consent as afsd (*a*)].

Power to mortgagee to grant leases (*b*).

XXXIV. PROVD ALWAYS & it is hby agrd that it shl be lful for the sd, *mtgee,* his exs, ads, & assns, at any time or times hrafter durg the continuce of this secy, & whether he or they shl or shl not have entered into posson of the sd mtged premes, to demise all or any pt of the sd premes for any term of yrs, &c., *continue as in form* XXXII., *omittg the covt at the end.*

Power to mortgagee to take immediate possession, and to manage, grant leases, &c. (*b*).

XXXV. PROVD ALWAYS & it is hby agrd that it shl be lful for the sd, *mtgee,* his exs, ads, or assns, at any time hrafter, whether there shl or shl not have been a default in the paymt of any ppal moys or intt hby secd, & although the same shl not have become due, to enter into the posson or rect of the rents & profits of the sd mtged premes, or any pt thof, & to manage the same, & to grt or enter into any such leases or agrmts for leases thof as mtgees in posson are by the Convcg & Law of Ppty Act, 1881, authorised to grt or enter into, & to accept surrenders of leases & tenancies upon such terms as may be thought pper (*c*), & to make allowces to & arrangemts with tenants, and to employ such agents or recers to collect the rents of the sd premes, at such salaries or commission as may be thought fit, & to expend such moys for repairs, insce, or orwise

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for his or their own use & benefit & give an effectual dischge for the pchase-moy for the same fixtures & fittings."

It is occasionally, where the mortgage comprises house property or a building estate, desirable to insert fuller powers of leasing, entering into contracts for leases, accepting surrenders of leases, laying out roads, &c., and management, which may be founded on the forms in SETTLEMENTS. In that case "the mtgor or mtgee (as the case may be)," as in the text, may be authorised "to exercise over the whole or any pt of the sd mtged premes, &c., the powers followg, that is to say, First a power, &c."

Special powers of leasing, &c.

(*a*) The words in this bracket which are often inserted render the clause nugatory, and had better be omitted.

(*b*) See p. 46, note.

(*c*) See also the power given by the C. A. 1881, s. 19 (1), to mortgagees in possession to cut and sell timber.

Trusts of rents and profits received.

Provisions for protection of mortgagee in possession.

in relon to the sd premes, as may be deemed expedient, & any moys so expended, with intt thron at the rate of £5 p.c. p.a. from the time of the expenditure thof, shl be repd by the sd, *mtgor,* his hrs, exs, or ads, to the sd, *mtgee,* his exs, ads, or assns, on demand, and in the meantime shl be chged on all the sd premes hby mtged: AND it is hby further agrd that all rents & profits reced by the sd, *mtgee,* his exs, ads, or assns, shl be applied as far as the same will extend in the first place in paymt of all costs & expses incurred by him or them in receivg or recoverg the same or orwise under this secy, & in the next place in dischge of any rents, rates, taxes, expses of repairs, or insce, or other outgoings affectg the sd mtged premes, & in the next place in paymt of the intt owing on this secy, & the surplus, if any, of such rents & profits may at the option of the sd, *mtgee,* his exs, ads, or assns, be eir applied in redon of the ppal moys owing on this secy, or may be deposited by him or them at intt in a bank, or may be pd to the sd, *mtgor,* his hrs, exs, ads, or assns: PROVD ALWAYS, & it is expressly agrd that the sd, *mtgee,* his exs, ads, or assns, in the event of his or their enterg into posson or rect of the rents & profits of the sd mtged premes or any pt thof, as afsd, shl not under any circes be liable to acct except for such moys as he or they shl actually rece nor for any involuntary losses incurred or occasd by him or them.

Covenant against registration (*a*).

XXXVI. The *mtgor* for himself & his assns hby covts with the *mtgee* that durg the continuce of this secy no pson, psons, or corporon, shl be regrd as proptor or proptors of the hds hby mtged or any pt thof witht the consent in writg of the mtgee, his exs, ads, or assns, & that if this covt shl be broken the ppal moys hby secd shl become immedly payable & the provons of s. 20 of the Convcg & Law of Ppty Act, 1881, shl not apply to this secy.

Attornment by mortgagor in possession (*b*).

XXXVII. AND THIS INDRE ALSO WITNETH, that for the conson afsd the sd, *mtgor,* doth hby attorn & become tenant from yr to yr to the sd, *mtgee,* of such pt or pts of the sd premes hby

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(*a*) If any person is registered as proprietor the mortgagee will be unable to convey the land by registered transfer to a purchaser unless he can obtain the land certificate. Under this clause he will be able to force the applicant for registration to hand the land certificate to him, or, which may be preferable, he may obtain registration as proprietor of an incumbrance under L. T. R. 121.

As to attornment clause or power of distress for interest.

(*b*) The practice, where the mortgagor is in the occupation of all or a part of the mortgaged property, to insert a power of distress for the interest, or a mtged as are in the occupon of the sd, *mtgor,* at the yrly rent of £——, clear of all dedons, to be pd by eql half-yrly, *or,*

Effect of Bills of Sale Acts.

clause making him attorn tenant to the mortgagee at a rent equal to or exceeding the interest for the like purpose of giving a right of distress, has had to be discontinued or modified in consequence of the Bills of Sale Acts, 1878 and 1882 (41 & 42 Vict. c. 31; 45 & 46 Vict. c. 43), except in the case of "debentures" of companies. The general definition of "bill of sale" in the Act of 1878, s. 4, extends to authorities or licences to take possession of personal chattels as security for any debt; and by s. 6 a power of distress or attornment clause is specially hit at. The obscurity of the latter section has occasioned great difficulty, but it has been determined that it does not apply where the mortgagee has taken possession and then demised the premises to the mortgagor, but does apply where the demise is created by an attornment clause in the mortgage deed itself (*Re Willis*, 21 Q. B. D. 384, disapproving *Hall* v. *Comfort*, 18 Q. B. D. 11, and see *Green* v. *Marsh*, [1892] 2 Q. B. 330), and that an express power of distress is also caught by s. 6, or the definition in s. 4 (*Pulbrook* v. *Ashby*, 56 L. J. N. S., Q. B. 376; 35 W. R. 779). But in *Mumford* v. *Collier*, 25 Q. B. D. 279, it was held that the Bills of Sale Acts only affect the attornment clause *quoad* bill of sale, and do not prevent its creating the relation of landlord and tenant between mortgagor and mortgagee, and consequently that the clause enables possession of the land to be recovered by the summary process provided by R. S. C. Order 3, r. 6, and Order 14, r. 1 (*Kemp* v. *Lester*, [1896] 2 Q. B. 162). While, therefore, a clause in either form would be undoubtedly void as a bill of sale as to any chattels seized under it, yet for the purpose of facilitating the mortgagee's remedies the attornment clause should, it is conceived, still be inserted; but an express power of distress would be absolutely useless. It was held in *Davies* v. *Rees*, 17 Q. B. D. 408, that s. 9 of the Act of 1882, avoiding bills of sale not in the statutory form avoids not only the charge on personal chattels but also the covenant for payment; and although this would not affect the mortgage of the land (*Re Burdett*, 20 Q. B. D. 310; *In re Yates*, 38 Ch. D. 113; *Small* v. *National, &c., Bank*, [1894] 1 Ch. 686; *In re Brooke*, [1894] 2 Ch. 600), it would be better, in order to prevent any question as to its effect on the covenant for payment that the attornment should be made by a separate instrument, which had better be under seal (Hood & Challis, Convg. Acts, 71).

As the Act of 1882 does not apply to "debentures" of companies (as to which see the note, *infra*, on bills of sale as to companies), nor to property abroad (see s. 4 of the Act of 1878), the forms of the attornment clause and power of distress are here retained; and the object of creating the relation of landlord and tenant is an additional reason for giving the form of the attornment clause. The following cases may be referred to in connection with the attornment clause—as to the amount of rent which might be reserved, *Ex parte Williams*, 7 Ch. D. 138; *Re Stockton, &c., Co.*, 10 Ch. D. 335; *Ex parte Jackson*, 14 Ch. D. 725; *Ex parte Punnett*, 16 Ch. D. 226; *Ex parte Voisey*, 21 Ch. D. 442 (which show that the rent may be in excess of the interest provided it is the fair value and not fictitious); as to applying the proceeds of a distress in discharge of principal, *Ex parte Harrison*, 18 Ch. D. 127. As to the relative rights of mortgagor and mortgagee with regard to possession, and the payment of an occupation rent by mortgagor in possession to a receiver appointed in a foreclosure action, see *Yorkshire Banking Co.* v. *Mullan*, 35 Ch. D. 125.

See further on this subject, articles in 34 Sol. J. 704, 716.

"qtrly" paymts on the respive days hinbfe appted for the paymt of the intt under this secy, but so that such rent shl be applied in or towards satisfon of such intt [& any surplus thof in or towards satisfon of the ppal moys owing on this secy]: PROVD ALWAYS, & it is hby agrd that it shl be lful for the sd, *mtgee,* his exs, ads, or assns, at any time witht giving any previous notice in that behalf, to enter into & upon & take posson of the sd premes, whof the sd, *mtgor,* has attorned tenant as afsd, & to determine the tenancy created by such attornmt: PROVD ALSO, & it is hby agrd that neir the rect of the sd rent nor the tenancy created by the sd attornmt shl render the sd, *mtgee,* his exs, ads, or assns liable to acct as mtgees in posson.

Power of distress for interest (*a*).

XXXVIII. AND THE SD, *mtgor,* doth hby grt to the sd, *mtgee,* his exs, ads, & assns, that in case the intt for the time being payable under this secy, or any pt thof, shl at any time be in arrear & unpd for —— days after eir of the days hinbfe appted for paymt thof, it shl be lful for the sd, *mtgee,* his exs, ads, or assns, into & upon the sd mtged premes, or such pt or pts thof as are now or shall from time to time durg the continuce of this secy be in the occupon of the sd, *mtgor,* or any pt thof, to enter, & for the intt so in arrear & unpd, & all costs and expses incurred by the non-paymt thof (includg the costs of distress) to distrain, & the distress & distresses then & there found to dispose of in due course of law, as landlords may do for rent reserved upon leases, to the intent that the sd arrears of intt, costs and expses may thby be satisfied.

Appointment of receiver. Full form applicable to freeholds, copyholds, and leaseholds (*b*).

XXXIX. AND THIS INDRE ALSO WITNETH, that in conson of the premes the sd, *mtgor,* with the concurrce of the sd, *mtgee,* doth hby appt the sd, *recer,* to be recer, agent, & atty, from time to time, in the name of the sd, *mtgor,* his hrs, exs, ads, or assns, or orwise to rece the rents & profits of the sd hds hby mtged [*if the appt of the recer is by a septe deed, say*

(*a*) See p. 50, note (*b*).

Statutory power of appointing receivers.

(*b*) By the C. A., 1881, s. 19 (1) (iii.), a mortgagee, where the mortgage is made by deed, is empowered (to the like extent as if the power had been in terms conferred by the mortgage deed, but not further), when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property (whether real or personal) or any part thereof; but by s. 24 (1), the appointment is not to be made until the mortgagee is entitled to exercise the power of sale *conferred by the Act,* a provision which renders the statutory "of the hds mentd in the schdle hto"], from the psnt & future tenants & occupiers thof & the psons liable to pay the same resply, & in case of the non-paymt thof to use all or any lful remedies for recoverg & obtaing paymt of the same, & to do all things necy or pper for recoverg & receivg the same as fully & effectually as the sd, *mtgor*, his hrs, exs, ads, or assns, could do: AND the sd, *mtgor*, doth hby direct the psnt & future tenants & occupiers of the sd premes resply, & the psons liable to pay the same resply, to pay the rents & profits of the sd premes unto the sd, *recer*, & to any future recer to be appted as hinafter mentd: AND doth hby declare that the rect of the sd recer for the time being shl be an effectual dischge to such tenants, occupiers, & psons for such rents & profits: AND the sd, *mtgor*, with the concurrce of the sd, *mtgee*, doth hby authorise the said recer to make such allowces to & arrangemts with such tenants, occupiers, & other psons as he shl think fit, & to give notices to quit, & bring, & take actions or pcdgs for ejectmt or recovery of posson of any of the sd premes on the expiron or determinon or forfeiture of any tenancy or orwise, & to relet the sd premes, or any pt thof, from time to time to such pson or psons as he shl think fit, on yrly, monthly, or weekly tenancies, at the best rents wch may be reasbly obtainable: AND IT IS HBY AGRD that the sd recer shl by & out of the rents & profits reced by him in the first place pay all ground rents, rates, taxes, chges, assessmts, & outgoings for the time being payable in

Direction to tenants.

Receiver's receipt to be a discharge.

Power to make allowances.

Trusts of rents received.

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power of appointing a receiver only available when the statutory power of sale is relied upon. Section 24 (2—8) supplies the ordinary subsidiary provisions. This statutory power appears to be adequate and sufficient for ordinary cases, so as to supersede in general the necessity for providing for the appointment of a receiver in the mortgage or by a separate deed, provided the statutory power of sale is incorporated. The statutory provisions may be incorporated so as to apply to a case where, as in the form in the text, a specified person is agreed upon as receiver, see form XL. The statutory provisions apply to registered charges, L. T. A. 1897, s. 9 (2). As to the appointment of a receiver by the Court on the application of a legal mortgagee in possession, see *Tillett* v. *Nixon*, 25 Ch. D. 238; *Mason* v. *Westoby*, 32 Ch. D. 206; *Re Prytherch*, 42 Ch. D. 590; *County of Gloucester Bank* v. *Rudry Merthyr, &c., Co.*, [1895] 1 Ch. 629. A receiver appointed by the Court cannot be empowered to carry on the mortgagor's business unless it is included in the security, *Whitley* v. *Challis*, [1892] 1 Ch. 64. See *post*, p. 168, note.

A receiver is generally appointed by a separate deed, in order that it may be delivered to him if he is called upon to act.

respt of the sd premes, & wch shl not be orwise pd, & the expse of repairg or insurg agst loss or damage by fire any bldgs or other ppty accdg to the covs of the sd respive leases, or wch he may orwise think fit to repair or insure; *if there be any prior chges, add,* "& keep down the intt on all ppal moys, & the yrly sums, if any, for the time being chged upon or payable out of the sd premes, or any pt or pts thof, & having priority over the moys for the time being due on the secy of these psnts [the sd indre of, &c.], & wch intt & yrly sums resply shl not be orwise pd, but so nevs as not to give the same resply any further or other secy than they resply already possess"; & in the next place deduct & retain for his own use so much, not exceedg £5 for every £100 reced, as in the opinion of the sd, *mtgee,* his exs, ads, or assns, the sd recer shl be reasbly entled to for his trouble & expses; & in the next place pay to the sd, *mtgee,* his exs, ads, or assns, by eql half-yrly, *or,* "qtrly," paymts on the —— day of ——, &c., the intt from time to time accruing due on the secy of these psnts [the sd indre of, &c.], & pay the premiums or other moys payable for keepg on foot any poly or pols of assurce for the time being subjt to this [the sd] secy, with power to pay such premiums or moys in priority, if so required by the sd, *mtgee,* his exs, ads, or assns, to the sd intt, & shl pay the surplus, if any, of the sd rents & profits unto the sd, *mtgor,* his hrs, exs, ads, or assns, resply accdg to the nature of the ppty;

Provision as to surplus rents.

PROVD ALWAYS, that the sd recer shl, if required by the sd, *mtgee,* his exs, ads, or assns, from time to time pay such surplus, or any pt thof, to the sd, *mtgee,* his exs, ads, or assns, in redon of the ppal sum owing to him or them on the secy afsd, or shl from time to time, if so required, pay such surplus or any pt thof into the —— Bank, at ——, or some other Bank to be approved of by him or them, as a fund to provide for the intt then next accruing due to him or them, under such secy, & any other paymts hinbfe authorised or required to be made wch may become payable in the meantime other than the paymt to the sd, *mtgor,* his hrs, exs, ads, or assns, & shl also, if required as afsd, from time to time retain such a sum in the sd Bank as shl be deemed pper for the ppose of keepg the acct open:

Covenant by receiver.

AND THE sd, *recer,* doth hby covt with the sd, *mtgee,* & also as a septe covt with the sd, *mtgor,* his hrs, exs, ads, and assns, that he the sd, *recer*, will, so long as he shl be recer of the sd rents & profits, use his utmost endeavours to collect and rece the same in mner afsd: AND THE sd, *mtgor*, doth hby covt with the sd, *mtgee*, that the powers & authorities hby given to the sd recer for the time being shl not be revocable by the sd, *mtgor*, witht the consent of the sd, *mtgee*, his exs, ads, or assns (*a*), & that he the sd, *mtgor*, will not obstruct the sd recer in recoverg or receivg any of the sd rents & profits, or in the exercise or pformce of any of his powers or duties under these psnts, durg the continuce of the afsd secy: AND FURTHER that in case the sd recer for the time being shl die or be disqualified to rece the sd rents & profits, or shl refuse or neglect to pform the duties hby imposed on him, or shl misbehave himself whilst any moys shl remain owing on the afsd secy, then & in any of such cases, except the death of the sd recer for the time being, the sd, *mtgor*, his hrs, exs, ads, or assns, will join with the sd, *mtgee*, his exs, ads, or assns, in removg the sd recer from the sd employmt, & will in any of such cases appt such other fit pson in the place of the recer so dying or being removed as the sd, *mtgee*, his exs, ads, or assns shl nominate to rece & apply the sd rents & profits in mner afsd: AND THAT in case the sd, *mtgor*, his hrs, exs, ads, or assns, shl refuse or neglect so to do within one calr month after being required in that behalf in writg by the sd, *mtgee*, his exs, ads, or assns, or in case the sd, *mtgor*, his hrs, exs, ads, or assns, shl from any cause be unable so to do, then it shl be lful for the sd, *mtgee*, his exs, ads, or assns, to remove the recer for the time being, & to appt some fit pson to rece & apply the sd rents & profits in mner afsd: PROVD ALWAYS & it is hby agrd that the sd recer shl be deemed to be in all respts the agent of the sd, *mtgor*, his hrs, exs, ads, or assns, & that the sd, *mtgee*, his hrs, exs, ads, or assns, or any of them, shl not, under any circes, be answerable for any loss or misapplicon of the sd rents & profits, or any pt thof, by reason of any default, neglect, or breach of trust, of or by the sd recer for the time being, or for any other loss or damage occasd by the acts or defaults of the sd recer, but that such loss, misapplicon, &

Covenants by mortgagor that powers shall not be revocable without consent.

To concur in appointment of new receiver.

Power for mortgagee to appoint on mortgagor's refusal.

Mortgagee not to be liable for default of receiver.

(*a*) See the C. A., 1882, s. 8, p. 30, note (*d*).

Receiver not to act until interest in arrear.

damage, & every recer's salary, shl be wholly borne & pd by the sd, *mtgor*, his hrs, exs, ads, or assns: PROVD ALSO, & it is hby agrd that the sd recer shl not act or assist in the exon of the trusts or powers hinbfe contd, unless & until some half-yrly, *or*, "qtrly" paymt of intt owing on the secy afsd shl be wholly or partially in arrear for one calr month, or unless some event has happened whby the sd, *mtgee*, his exs, ads, or assns, shl be entled to exercise his or their power of sale, or unless & until some poly of assurce for the time being subjt to the secy afsd shl become void, or unless & until the sd, *mtgor*, his hrs, exs, ads, or assns, shl make default in pformg or observg any of the covts or provons in the sd respive leases or in these psnts [the sd indre of, &c.] contd & on his or their pt to be pformed or observed other than the covts for the paymt of the sd ppal moys & intt: PROVD ALSO, and it is hby agrd that no tenant or other pson paying moy to, or havg any dealgs with, the sd recer shl be concerned to inquire whether any case has happened to authorise him to act or orwise as to the regularity of his pcdgs.

Appointment of receiver. A short form with reference to the statute.

XL. AND IN conson of the premes the sd, *mtgor*, with the concurrce of the sd, *mtgee*, doth hby appt the sd, *recer*, to be recer of the rents, profits, & income of the sd premes hby mtged, & it is hby agrd that the sd, *mtgee*, his exs, ads, or assns, may remove the sd recer & appt a new recer from time to time in the same mner as if the moys hby secd had become payable, & as if he or they had become entled to exercise his or their power of sale of the sd mtged premes, *or*, *if the statutory power of sale is excluded*, "as if the power of sale conferred on mtgees by the Convcg & Law of Ppty Act, 1881, were applicable to this secy & had become exercisable," & all the provons of the same Act with respt to the apptmt of recers by mtgees & the powers, remuneron, & duties of recers so appted & all other provons of the sd Act with respt to recers shl, as far as may be [& subjt to the varions hrin contd], apply accdly with reference to the sd, *recer*, & any future recer appted under this secy.

Various additions to statutory powers of receiver.

XLI. PROVD ALWAYS, & it is hby agrd that any recer appted by the sd, *mtgee*, his exs, ads, or assns, of the premes hby mtged or any pt thof under the statutory power in that behalf (*a*) may enter into posson or rect of the rents & profits of the sd mtged premes, & act in all respts as such recer not only in the cases provd for by the Convcg & Law of Ppty Act, 1881, in that behalf, but also in case of any breach of any covt by the sd, *mtgor*, hinbfe contd or implied by law (other than the covt for paymt of the ppal moy & intt hby secd), & that the sd recer may in his own name, but as agent for the sd, *mtgor*, from time to time grt such leases of the sd hds & premes or any pt thof, whether for occupon or bldg or repairg pposes, or orwise, for such terms of yrs & at such rents as the sd recer shl in his absolute discron think fit, & may enter into any agrmts for such leases of the sd premes, or any pt thof, or for lettg the same on qtrly or yrly tenancies, and may accept surrenders & grt renewals of any leases or agrmts for leases on any terms whatsr, & also may accept such premiums for the grt, surrender, or renewal of any such leases as he shl think fit; AND any premiums so reced by him shl be applied in the same mner as income arising from the sd demised premes; AND it is hby further agrd that the sd recer may make allowces to & arrangemts with the psnt and future tenants or occupiers of the sd premes or other psons by whom the rents & profits thof may be payable, & shl if required by the sd, *mtgee*, his exs, ads, or assns, from time to time pay any moys in his hands wch but for this psnt provo would be payable to the sd, *mtgor*, his hrs, exs, ads, or assns, or any pt of such moys, to the sd, *mtgee*, his exs, ads, or assns, in dischge or redon of the ppal moy hby secd or orwise, or into the —— Bank, at ——, or some other bank to be approved of by the sd, *mtgee*, his exs, ads, or assns, as a fund to provide for the intt then next accrug to him or them under this secy, & any other paymts hby or by statute authorised or required to be made throut or wch may become payable other than the paymt to the sd, *mtgor*, his hrs, exs, ads, or assns, & shl also if required from time to time retain such a sum in the sd bank as shl be deemed pper for the ppose of keepg the acct open.

XLII. PROVD ALWAYS, & it is hby agrd that the powers of

Addition to powers

(*a*) Where a receiver is appointed under the preceding form by reference to the statute, say, "that the sd, *recer*, & any recer appted under the power lastly hinbfe contd."

of sale, &c. in mortgage of an undivided share.

sale & leasg [& apptg recers] hinbfe contd, *or,* "conferred by statute on mtgees," may be exercised eir in relon solely to the sd moiety, *or,* "shares," hby mtged of the sd premes hinbfe descd or in conjon with the owner or owners for the time being of, or the pson or psons for the time being havg power in that behalf over, the whole moiety, *or,* "shares," of the sd premes in relon to the entirety thof.

Power of partition in mortgage of undivided share.

XLIII. PROVD ALWAYS, & it is hby agrd that it shl be lful for the sd, *mtgee,* his exs, ads, or assns at any time or times after the sd —— day of —— next, witht any further consent of the sd, *mtgor,* his hrs [exs, ads], or assns, to concur with the owner or owners for the time being of or the pson or psons for the time being havg power in that behalf over the other moiety, *or,* "shares," of the sd hds and premes hinbfe descd in makg a parton of the same premes or any pt or pts thof, & to give or rece moy for equality of parton, & to make such parton upon such terms or condons as he or they shl think fit, with power to rescind or vary any contract for parton witht being responsible for loss, & to enter into & do any agrmts, assurces, or acts for the pposes afsd (*a*) ; PROVD THAT the sd power of parton shl not be exercised unless & until the power of sale vested in the sd, *mtgee,* his exs, ads, & assns, by virtue of these psnts shl become exerciseable, & he or they shl have given a notice, &c., *continue clauses as to notice & as to proton of pchasers & as to applicon of moys as in power of sale,* p. 20, *form* I., *mutatis mutandis, saying,* "the owner or owners for the time being, or pson or psons havg power to parton the other moiety [share], of the sd premes shl not be concerned, &c., & "the moys to be reced for equality on any such parton as afsd" : AND it is hby agrd that every sum of moy wch may be pd by the sd, *mtgee,* his exs, ads, or assns, for equality of parton under the power

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As to legal estate.

(*a*) A provision for the concurrence of the heir of the mortgagee to convey the legal estate in the case of freeholds is not required, as it vests in the personal representative of the mortgagee under the C. A., 1881, s. 30 ; but in the case of copyholds it should be inserted, see the Copyhold Act, 1894, s. 88.

If the legal estate is outstanding in trustees, add here : "& that the trees or tree in whom the legal este in the sd moiety *or* 'shares' hby mtged shl be vested, shl make such assurce or assurces thof for effectuatg such parton as the pson or psons makg the same shl direct."

hinbfe contd, with intt, &c., shl be repd to him or them by the sd, *mtgor*, his hrs, exs, ads, or assns, on demand, & until paymt shl be chged on all the hds & premes for the time being subjt to this secy; AND it is hby further agrd that the hds taken upon any such parton shl be subjt in all respts to this secy & to the power of sale & all other powers & provons conferred by or incident to the same, other than the sd power of parton.

Mortgagee's indemnity clause.

XLIV. PROVD ALWAYS, & it is hby agrd that the sd, *mtgee*, his hrs, exs, ads, & assns, or any of them, shl not be ansble for any involuntary losses wch may happen in or about the exercise or exon of the power of sale or any of the powers or trusts wch may be vested in him or them by virtue of these psnts (*b*) or any statute.

Receipt clause in mortgage to bank.

XLV. PROVD ALWAYS, & it is hby agrd that the rect of any of the cashiers of the sd bank for any ppal moys or intt hby secd, or for any moys arisg from a sale of the sd mtged premes or any pt thof [or any moys, stks, funds, or secs, comprd in or arisg under this secy], shl effectually dischge the pson or psons [or Co] paying or transferrg the same thrfrom, & from being concerned to see to the applicon thof, whether any moy remains owing on this secy or not.

Proviso as to changes in firm (*c*).

XLVI. PROVD ALWAYS, & it is hby decld that this secy shl not be affected by reason of, *or*, " these psnts are intd to be a continuing secy for the moys or balce from time to time owing from [to] the sd firm of X. and Co, as hinbfe provd, notwg " any change in the sd firm of X. & Co, by the death or retiremt of any member or members, or the introdon of any new member or members, or any change in the style or title of such firm.

Clause preserving right of consolidation (*d*).

XLVII. AND IT IS HBY AGRD that the restron on the rt of consolidatg mtge secs wch is contd in section 17 of the Convcg & Law of Ppty Act, 1881, shl not apply to this secy.

(*b*) This is provided for as to the power of sale by the C. A., 1881, s. 21 (6).

(*c*) See as to this clause 2 Dav. Prec., pt. 2, pp. 372, *et seq.*, note.

Consolidation of mortgages.

(*d*) See Fisher on Mortgages, pp. 577, *et seq.* The clause in the text is not inserted for general use, but occasionally, where (as in the case of builders) there is a likelihood of several mortgage transactions occurring between the same parties, its insertion may be proper. The right of consolidation is abolished, where either or both of the mortgages is made since 1881, by the C. A., 1881, s. 17, but only if a contrary intention is not expressed in the mortgages or one of them; so that the right may be created by express declaration. In cases not falling within the C. A., 1881, where A. mortgages Blackacre to B. and Whiteacre to C., any person acquiring both mortgages can consolidate unless the equity of

Indemnity as to restrictive covenants.

XLVIII. AND the sd, *mtgor,* hby covts with the sd, *mtgee,* his exs, ads, & assns, that the sd, *mtgor,* his hrs & assns, will durg the continuce of this secy duly observe & pform the covts & provons restrictive of or relatg to bldg on, or the mode of user or enjoymt of the sd premes hby mtged or any pt thof wch are contd in an indre dated, &c., made, &c.: AND will keep the sd, *mtgee,* his exs, ads, or assns, indemnified in respt of all actions, pcdgs, claims, costs, & damages occasd by any breach of any of such covts or provons, & that any costs or damages sustained by the sd, *mtgee,* his exs, ads, or assns by reason of any such breach, with intt thron at the rate of —— p.c. p.a., shl be repd by the sd, *mtgor,* his hrs, exs, ads, or assns, to the sd, *mtgee,* his exs, ads, or assns, on demand, & in the meantime shl be a chge upon all the sd mtged premes.

Acknowledgment of right to production and undertaking for safe custody by a mortgagor who retains the deeds (*a*).

XLIX. THE sd, *mtgor,* hby acknowes the rt of the sd, *mtgee,* to the prodon & delivery of copies of the documts mentd in the schdle hto (the posson of wch is retained by the sd, *mtgor*); AND hby undertakes with the sd, *mtgee,* for the safe custody of the same documts: PROVD ALWAYS & it is hby agrd that so long as any rt of redmon shl remain subsistg under these psnts, all costs and expenses incurred by eir pty of or incidental to the specific pformce of any obligon imposed by the acknmt hinbfe contd shl be pd by the sd, *mtgor,* his hrs, exs, ads, or assns, & that all costs & expses so incurred by the sd, *mtgee,* his exs, ads, or assns, with intt thron, at the rate of —— p.c. p.a. from the time of the same havg been expended, shl on demand be repd to him or them by the sd, *mtgor,* his hrs, exs, ads, or assns, & until such repaymt shl be a chge on all the premes hby mtged.

Power to solicitor mortgagee to charge (*b*).

L. AND IT IS HBY AGRD that the sd, *solor mtgee,* shl be entled to make & rece all such chges and emolumts for business (whether of an ordinary or strictly professional character or

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redemption in Blackacre and Whiteacre is vested in or charged in favour of different persons at the time when both mortgages become vested in the same person: *Minter* v. *Carr,* [1894] 2 Ch. 321; 3 Ch. 498; *Pledge* v. *Carr,* [1894] 2 Ch. 328; [1895] 1 Ch. 51; *Pledge* v. *White,* [1896] A. C. 187.

As to mortgagor retaining deeds.

(*a*) See the C. A., 1881, s. 9, Vol. I., p. 421, note. The retention of any of the deeds by the mortgagor should seldom be permitted (see 2 Dav. Prec., part 2, p. 238); but it is occasionally necessary, in which case a memorandum of the mortgage should generally be endorsed on one or more of them. The proviso at the end of this form is necessary. See the Act, s. 9 (5), (13).

Profit costs

(*b*) It used to be the rule that a solicitor mortgagee could not in the absence not) done by him or his firm in relon to any sale or other mre done in respt of the sd mtged premes under any of the powers or provons hrin contd, or any statutory power, or orwise, as he wd have been entled to make & rece in respt of such business if he had not been a mtgee hrunder, & to chge agst the mtgor, his exs or ads, all such costs, chges & expses, as wd have been chgeable agst him & them as mtgee's costs, if the mtgee had employed anor pson to act as his solor in respt of this secy.

Clauses as to devolution of powers in mortgage to several on a joint account.

LI. PROVD ALWAYS, & it is hby agrd that all the powers & rts hinbfe given to the sd, *mtgees*, their exs, ads, & assns shl be exerciseable by & devolve upon the [survors &] survor of them, & the exs & ads of such survor, their or his assns, or the pson or psons for the time being entled to rece & give an effectual dischge for the moys hby secd.

Interpretation clause

LII. PROVD LASTLY, & it is hereby decld that unless such interpreton is excluded by or repugnant to the context, *or*, "whenever the context so admits," the expression, "the mtgor,"

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of solicitor mortgagee.

of express contract charge profit costs of preparing a mortgage from his client to himself, *Eyre* v. *Wynn-Mackenzie*, [1894] 1 Ch. 218. The rule is now altered by the Mortgagees' Legal Costs Act, 1895 (58 & 59 Vict. c. 25), which authorises a solicitor to whom either alone or jointly with any other person a mortgage is made or his firm to receive the same costs for work done in respect to the mortgage, as if the mortgage had been made to a stranger who had employed the solicitor or his firm to transact the business, and in case a mortgage is made or transferred to him, or to him jointly with another person, to charge against the security the same costs as if the mortgage had been made and remained vested in a person who was not a solicitor who had employed him or his firm to do any business with respect to the mortgage or the property comprised therein.

Solicitor trustee.

The Act, however, appears not to apply to a solicitor trustee, who can in the absence of express contract charge profit costs only where he is acting in litigation for himself and his co-trustees, *Cradock* v. *Piper*, 1 Mac. & G. 664; *Re Corsellis*, 34 Ch. D. 675. See the note, *infra*, to a mortgage to a solicitor, p. 169.

As to use of interpretation clause.

(*c*) See p. 9, note. Where this interpretation clause is used or the definition at the commencement of the deed, which is considered preferable, the words "hrs, exs, ads, & assns," or "exs, ads & assns," in the case of the mortgagor, and "exs, ads, & assns," in the case of the mortgagee will be omitted throughout; but in a mortgage of freeholds or copyholds, the words "hrs & assns," must, in the case of the *mortgagee*, be inserted wherever used in the full forms. There is some risk of this being forgotten, and of a miscarriage resulting in a mortgage of freeholds through the omission of the word "hrs" in the habendum, which is necessary to pass the fee; to obviate which it would be better to use the statutory words, "in fee simple." On account of the risk of clerical errors arising from the similarity of the words as hinbfe used, shl include his hrs, exs, ads, & assns [*or in case of leasehds & psonalty,* exs, ads, & assns], & the expression, "the mtgee [s]," shl include his exs, ads, & assns [the survors & survor of them, & the exs, or ads of such survor & their or his assns].

COVENANTS FOR TITLE (*a*).

I.

FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS. *With* VARIATIONS (*b*).

That lease is good, &c.

AND THE SD, *mtgor,* doth hby covt with the sd, *mtgee,* his hrs, exs, ads, & assns, that the sd lease is now valid & subsistg &

"mtgor" and "mtgee," it might be desirable to use the expressions "owner" and "mtgee" or some other expressions which are free from this objection; but this is not much regarded in practice.

Provisions of the C. A., 1881, as to implying covenants for title, &c., in mortgages, &c.

(*a*) The C. A., 1881, s. 7 (c), enables the usual absolute covenants for title, &c., in a mortgage to be implied by making the mortgagor convey "**as benefl owner,**" in the same manner as the qualified covenants for title may be implied in a conveyance on sale, see Vol. I., pp. 406, *et seq*. The covenants implied are for right to convey, quiet enjoyment after default, freedom from incumbrances, and further assurance (sub-s. 1, C.), with the addition in the case of leaseholds of a covenant that the lease is good, and that the rents and covenants have been paid and performed, and for the indemnity of the mortgagee in respect of the rents and covenants in the future (sub-s. 1, D.). Although the statutory covenants do not apply to a demise by way of lease *at a rent* (sub-s. 5), they do apply to a lease *not* reserving a rent (see the definition of "Conveyance" in s. 2), and may therefore be implied in a mortgage by demise of freeholds or leaseholds. Where it is desired to imply only a covenant against incumbrances by a person other than the mortgagor joining in the mortgage, or by a mortgagee in a transfer or re-conveyance, this may be done by making him convey "**as tree**" or "**as mtgee**" or as the case may be, under sub-s. 1, F. Where more persons than one join in the conveyance, the implied covenant of each extends to the subject matter expressed to be conveyed by him. The large definitions of "conveyance," "mortgage," and "property" in s. 2, will be borne in mind in construing these provisions, which apply to property of any description, real or personal; and having regard to the definitions of "conveyance"

(*b*) The variations for several mortgagees will be merely the substitution of the plural.

in nowise forfeited, surrendered, or become void or voidable: AND THAT the rents & covts on the pt of the lessee, & condons by & in the sd lease reserved & contd, have been duly pd, observed, & pformed up to the date of these psnts: AND THAT he the sd, *mtgor* (*c*), now has full power to assure (*d*) all the sd freehd premes hby mtged to the use of the sd, *mtgee*, his hrs & assns in mner afsd (*e*), & to surrender all the sd copyhd or customaryhd premes hby mtged to the use of the sd, *mtgee*, his hrs & assns, in mner afsd, accdg to the custom of the sd manor (*e*), & also to assn (*f*) all the sd leasehd premes hby mtged unto the sd, *mtgee*, his exs, ads, & assns, for the term (*g*), & in mner afsd (*e*): AND THAT in case default shl be made in paymt of the sd sum of £——, or the intt thon, or any pt thof, resply, on the sd —— day of —— next (*h*), it shl be lful for

For right to convey.

For quiet enjoyment after default.

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and "mortgage," a mortgage in the form of a mere charge, if by deed, may be made to imply the statutory covenants. The remarks in Vol. I., pp. 406, *et seq.*, as to the implied covenants in a conveyance on sale, are applicable to the corresponding covenants in a mortgage, subject to the modification that the covenants by a beneficial owner are absolute instead of qualified. The provisions of the Act as to married women (sub-s. 3), are of diminished importance, since a married woman is under the M. W.'s P. A., 1882, as amended by the M. W.'s P. A., 1893, able to covenant as a *feme sole*.

The Act should be relied upon.

The statutory covenants may in general be (as they are in practice) relied upon (except as to property abroad), and the covenants in question should be omitted in mortgages, transfers, and re-conveyances, the necessary words to imply the statutory covenants being inserted; and the covenants may be implied in equitable as well as legal mortgages, if by deed. But the old forms of covenants for title, &c., are given in the text for comparison with the statutory covenants, and for use in the few cases in which they may be required. Occasionally, it is intended that the mortgagee shall have power to take possession at any time, although no default has been made in payment of the mortgage money; in that state the statutory covenant for quiet enjoyment, which arises only after default, may, if thought material, be extended, but the point is of small importance.

(*c*) If other parties join in conveying, add here, "with the concurce of the sd, *other pties*."

(*d*) Or "grt," "appt," or "appt & grt," as the case may be.

(*e*) If the mortgage is subject to a prior charge or charges, add here, "subjt to the sd indre of mtge of the —— day of ——, & the sd sum of £—— & intt thby secd as afsd," or "subjt to the sd prior chges & incumbces to wch the same premes are hinbfe expd to be subjt," or "subjt as afsd."

(*f*) For mortgage by underlease, say "demise."

(*g*) For several leases, say "respive terms."

(*h*) If the mortgage-money be payable on demand, the words "on de-

For further assurance.

For payment of rent and

the sd, *mtgee*, his hrs, exs, ads, & assns resply, quietly to enter upon the sd mtged premes, or any pt thof resply, & the same thenceforth to hold & enjoy, & to rece the rents & profits thof accdly (*a*), witht any interruption, claim, or demand by the sd, *mtgor*, or any pson whomsr (*b*): AND THAT, free & dischged from or orwise by the sd, *mtgor*, his hrs, exs, or ads, sufftly indemnified agst all estes, incumbces, claims, & demands whatsr (*c*): AND FURTHER, that he the sd, *mtgor*, & every other pson havg or claimg any este or intt in or to the sd mtged premes, or any pt thof resply, will at all times hrafter, at the cost, until foreclosure or sale, of the sd, *mtgor*, his hrs, exs, or ads, & aftwds of the pson or psons requirg the same, exte & do all such assurces or acts for further or more effectually assurg the sd freehd & copyhd or customaryhd premes, or any pt thof resply, to the use of the sd, *mtgee*, his hrs & assns, in mner (*d*) afsd, & assurg the sd leasehd premes, or any pt thof, unto the sd, *mtgee*, his exs, ads, & assns, for all the residue wch shl be then unexpired of the sd term (*e*) in mner (*f*) afsd (*g*), as shl be reasbly required: AND the sd, *mtgor*, doth hby further for himself (*h*) and his assns, covt with the sd,

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mand" will be substituted for the words "on the sd —— day of —— next."

(*a*) If the mortgage is subject to a prior charge or charges, add here "subjt as afsd."

(*b*) If the mortgage is subject to a prior charge or charges, add, "other than & except any pson or psons claimg in respt of the sd mtge," or "in respt of any of the prior chges & incumbces afsd."

(*c*) If the mortgage is subject to a prior charge or charges, add, "save & except the sd indre of mtge," or "respive prior chges & the incumbces afsd & claims & demands in respt thof."

(*d*) If the mortgage is subject to a prior charge or charges, add "& subjt as."

(*e*) For several leases, say "respive terms."

(*f*) If the mortgage is subject to a prior charge or charges, add "& subjt as."

(*g*) For mortgage by underlease, add, "& also, if thrunto required, the sd revon of one day hby reserved."

(*h*) As to the effect of the mortgagor covenanting for his "assigns," see *Doughty* v. *Bowman*, 11 Q. B. 444.

mtgee, his exs, ads, & assns, that he the sd, *mtgor*, his hrs, exs, ads, or assns, will durg the continuce of this secy duly pay the rent (*i*) reserved by, & pform & observe the covts & agrmts on the pt of the lessee & condons contd in the sd lease (*i*), & will at all times keep the sd, *mtgee*, his (*k*) hrs, exs, ads, & assns, indemnified agst the same & all actions, pcdgs, costs, damages, claims, & demands in respt thof. performance of covenants of lease.

II.

PERSONALTY. VARIATIONS *for a* POLICY *of* ASSURANCE, *and for a Mortgage* SUBJECT *to* PRIOR CHARGES *or* INCUMBRANCES (*l*).

AND THE SD, *mtgor*, doth hby covt with the sd, *mtgee*, his exs, ads, & assns (*m*), that he, the sd, *mtgor*, now has full power to assn the sd premes hby mtged unto the sd, *mtgee*, his exs, ads, & assns, in mner afsd, free from incumbces (*n*) : AND THAT he the sd, *mtgor*, & every pson havg or claimg any este or intt in or to the sd mtged premes, or any pt thof, will at all times hrafter, at the cost, until foreclosure or sale, of the sd, *mtgor*, his exs or ads, & aftwds of the pson or psons requirg the same, exte, & do all such assurces & acts for further or more effectually assurg the sd premes, or any pt thof, unto the

For right to assign.

For further assurance.

(*i*) For several leases, say, "respive rents," "respive lessees," & "respive leases."

(*k*) For several mortgagees, say, "the sd, *mtgees*, & every of them, their & every of their."

(*l*) The variations for several mortgages will be merely the substitution of the plural. See notes to the last form.

(*m*) For a policy insert here, "that the sd poly of assurce hby mtged is now valid & subsistg & in nowise forfeited or become void or voidable &."

(*n*) If the mortgage is subject to a prior charge or charges, add, "save as afsd."

sd, *mtgee*, his exs, ads, & assns, & enablg him or them to recover & rece or obtain paymt, transfer, or delivery of the same (*a*), as shl be reasbly required.

III.

CLAUSE *incorporating* STATUTORY COVENANTS *for* TITLE.

AND IT IS HBY AGRD that the same covts shl be deemed to be implied on the pt of the sd Z. as if he had been expd to grant, *or*, "assign," *or*, "demise," *or*, "covt to surrender," the premes hby "grted," *or*, "assned," *or*, "demised," *or*, "covted to be surrendered," as benefl owner.

IV.

COVENANT *against* INCUMBRANCES *by* ONE *for* FREEHOLDS *or* COPYHOLDS. VARIATIONS *for* LEASEHOLDS *or* PERSONALTY (*b*).

AND THE SD, *covtor*, doth hby covt with the sd, *mtgee or transferee*, his hrs (*c*) & assns, that the sd, *covtor*, has not at any time hrtofore done or knowingly omitted or suffered, or been party or privy to anything whby or by means whof the sd premes hby assured (*d*), or any pt thof, are, is, or may be incumbered or affected in any mner whatsr, or whby he the sd, *covtor*, is in anywise prevented from assurg (*e*) the same premes, or any pt thof, in mner afsd.

(*a*) If the mortgage is subject to a prior charge or charges, add, "subjt as afsd."

(*b*) See p. 65, note (*l*).

(*c*) For leaseholds or personalty, "exs, ads."

(*d*) "Grted," "surrendered," or "assned," as the case may be, or if that expression be appropriate, "the sd premes hby mtged."

(*e*) "Grantg," "surrenderg," or "assng."

V.

COVENANT *against* INCUMBRANCES *by* TWO *or more for* FREEHOLDS *or* COPYHOLDS. VARIATIONS *for* LEASEHOLDS *or* PERSONALTY (*f*).

AND EACH of them, the sd, *covtors,* so far as relates to his own acts & omissions only, doth hby covt with the sd, *mtgee or transferee,* his hrs (*g*) & assns, that they the sd, *covtors, or,* "the sd covtg pties," resply have not at any time hrtofore done, or knowingly omitted or suffered, or been pty or privy to anything whby or by means whof the said premes hby assured (*h*), or any pt thof, are, is, or may be incumbered or affected in any mner whatsr, or whby they the sd, *covtors, or,* "sd covtg pties," resply are in anywise prevented from assurg (*i*) the same premes, or any pt thof, in mner afsd.

PRECEDENTS (*k*).

I.

MORTGAGE *in* FEE *of* FREEHOLDS *by* ONE MORTGAGOR *to* ONE MORTGAGEE. VARIATIONS *for* REGISTERED LAND.

PREC. I.

THIS INDRE made the —— day of ——, BETN A., *mtgor,* of, &c., of the one pt, & B., *mtgee,* of, &c., of the other pt: WHAS the sd A. is seised of the hds hby mtged for an este Parties.

(*f*) See p. 65, note (*l*).

(*g*) For leaseholds or personalty, "exs, ads."

(*h*) See p. 66, note (*d*).

(*i*) See p. 66, note (*e*).

(*k*) For precedents of equitable charges accompanying a deposit of deeds or other documents of title, see *infra.* As to the importance of getting the legal estate as a protection against prior undisclosed equitable titles, and subsequent incumbrances without notice, and as to the importance of granting the deeds, see *infra,* p. 81, note. As to charges on registered land, see *ante,* pp. 1 *et seq.*; and as to the precaution against registration to be taken by a mortgagee of unregistered land, see p. 4, note.

Recitals.

Witnesseth.

Covenant for payment of principal and interest after default.

Also witnesseth.

Grant.

Habendum.

in fee simple in posson, free from incumbces (*l*): AND WHAS the sd B. has agrd with the sd A. to lend him the sum of £——, upon havg the repaymt thof, with intt at the rate hinafter mentd, secd in mner hinafter appearg (*m*): NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, & in conson of the sum of £——, now pd to the sd A. by the sd B. (the rect whof the sd A. doth hby acknowe (*a*), the sd A. hby covts with the sd B. to pay to him on the —— day of —— next, *usually the first day for paymt of intt,* the sum of £——, *the ppal sum,* with intt thron in the meantime at the rate of —— p.c. p.a. from the date of these psnts: AND FURTHER if the sd moy shl not be so pd to pay to him intt at the rate afsd, by eql half-yrly, *or,* "qtrly," paymts, on the —— day of ——, &c., *specify half-yrly or qtrly days* in every yr on the ppal moys for the time being remaing due on this secy: AND THIS INDRE ALSO WITNETH, that in further psuance of the recited agrmt, & for the conson afsd, the sd A., **as benefl owner** (*b*), doth hby grt unto the sd B., *pcels, referrg, if need be, to a schdle or plan, or both, see Vol. I.*, pp. 387 *et seq.* (*c*): To HOLD the same UNTO & TO THE USE of the sd B., his hrs & assns (*d*), subjt to an indre of lease, dated, &c., & made, &c., whby the premes were demised to, &c., for a term of —— yrs,

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(*l*) For registered land, add "& is regrd as proptor thof with —— title under the no. —— hinafter mentd." The deed may be somewhat shortened by omitting recitals, in which case the words at the beginning of each witnessing part referring to the agreement will be omitted.

(*m*) For registered land, add "& by a regrd transfer of the sd hds, AND WHS in psuance of the sd recited agrmt the sd A. hath transferred the sd hds to the sd B. by regrd assurance."

(*a*) As to the omission of the indorsed receipt for the consideration money, see the C. A., 1881, s. 54, Vol. I., p. 383, note.

As to implying covenants for title, &c.

(*b*) It is assumed in these precedents that the mortgagor's covenants for title, and the covenants by trustees or mortgagees against incumbrances will be implied in reliance on the Act by the use of the words "**as benefl owner,**" or "**as tree**" or "**as mtgee,**" &c. (as the case may be), which are printed in thick type in order that they may not escape attention.

(*c*) For registered land, add "being the land, &c., Vol. I., p. 387, form VIII., "& so that the descriptn contd in the sd title shl not restrict the generality of the descriptn hinbfe contd, but may enlarge the same."

(*d*) As to the substitution of the words "in fee simple," for "hrs & assns," see the C. A., 1881, s. 51, Vol. I., p. 401, note; and above, p. 61, note.

PREC. I.

Proviso for redemption (*f*).

at the yrly rent of £—— (*e*), & subjt to the provo for redmon hinafter contd: PROVD ALWAYS & it is hby agrd & decld that if the sd A., his hrs, exs, ads, or assns, shl on the sd —— day of —— next, pay to the sd B., his exs, ads, or assns, the sd sum of £——, with intt thron in the meantime at the rate afsd, the sd B., his exs, ads, or assns, shl at any time thrafter, upon the reqt & at the cost of the sd A., his hrs, exs, ads, or assns, reconvey the sd premes hby assured to the use of the sd A., his hrs & assns (*g*). *If bldgs form a material pt of the secy, add a covt to insure & repair*, p. 42, *form* XXIX., *or* p. 45, *form* XXX. (*h*). [*Covt agst registron*, p. 50, *form* XXXVI. *Mtgees indemnity clause*, p. 59, *form* XLIV.] IN WITS, &c.

II.

MORTGAGE *in fee of* FREEHOLDS *by* ONE MORTGAGOR *to* TRUSTEES (*k*) *or others advancing money on* JOINT ACCOUNT.

PREC. II.

Recitals.

Agreement for loan.

Parties, A., *mtgor*, 1; B., C., & D., *mtgees*, 2. *Recite title of mtgor, see last Precedent.* AND WHAS the sd B., C., & D.,

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(*e*) For other forms referring to the tenancies, see Vol. I., p. 401, *et seq.* If the parcels are contained in a schedule, the tenancies may conveniently be given in a separate column of the schedule, in which case say here "subjt to the leases and tenancies mentd in the schdle hto."

(*f*) If brevity is desired, the short form of proviso for redemption to follow the habendum at p. 20 may be substituted.

(*g*) For registered land, add "& exte a transfer thof & deliver the land certfe to the sd A., his hrs or assns."

(*h*) The power of sale is omitted in reliance on the statute, see p. 20, note. As to the old practice, where the mortgagor is in the occupation of the property, of inserting an attornment clause or power of distress for the interest, and the difficulties occasioned by the Bills of Sale Acts, 1878 and 1882; and as to the utility of the former clause, see p. 50, note. As to excluding or restricting the power given by the C. A., 1881, s. 18, to the mortgagor to grant rack-rent leases for occupation or building purposes, see p. 46, note; and as to excluding s. 17 of the same Act, abolishing the right of consolidation, see p. 59, note.

As to mortgages to trustees.

T.A., 1893.

As to value.

(*k*) As to the importance of taking mortgages in this form so as to avoid bringing the trust on to the title, see Elph. Introd. Conv.; *Carritt* v. *Real, &c., Advance Co.*, 42 Ch. D. 263. The duties of trustees lending money on mortgage as regards value and title are now for the most part regulated by the T. A., 1893 (56 & 57 Vict. c. 53), s. 8. By s. 8, sub-s. 1, a trustee is not to be responsible merely on the ground of insufficiency in value of the security, if the amount

PREC. II. have agrd with the sd A., to lend him the sum of £—— out of moys belongg to them on a jt acct upon havg the repaymt thof with intt at the rate hinafter mentd secd in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the sum of £—— now pd to the sd A. by the sd B., C., & D., out of moys belongg to them on a jt acct as afsd (the rect whof the sd A. doth hby acknowe) the sd A. covts with the sd B., C., & D., to pay to them on the —— day of —— next, *usually the first day for paymt of intt,* the sum of £——, *the ppal sum,* with intt for the same in the meantime at the rate of —— p.c. p.a. from the date of these psnts: AND FURTHER if the sd moy shl not be so pd to pay to them intt at the rate afsd by eql half-yrly [qtrly] paymts on the —— day of ——, &c., *specify half-yrly or qtrly days,* in every

Witnesseth.

Covenant to pay principal

and interest after default.

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advanced did not at the time when the loan was made exceed two-thirds of the value of the property (of whatever tenure and whether agricultural or house or other property, if the trustee can lawfully lend upon it) according to the valuation of a person whom the trustee reasonably believed to be an able practical surveyor or valuer (although not in practice in the locality) acting independently of the mortgagor, and who advised the advance. This enactment, which relaxes the general rule formerly prevailing imposing a limit of two-thirds in the case of land and half in the case of house property, and substitutes the two-thirds limit, whatever the nature of the property may be, allows a latitude which might sometimes prove dangerous; but trustees must doubtless still act with due caution, and avoid lending on speculative securities, especially such as are dependent on the fluctuations of trade; and (although the trustees might be within the protection of the Act) it would seldom be prudent, in the case of house property, to advance up to the two-thirds limit. See also as to the liability of a trustee advancing too much, s. 9 of the T. A., 1893; *Re Salmon*, 42 Ch. D. 351. Trustees must exercise their discretion as to calling in a mortgage which has become insufficient, see *Re Medland*, 41 Ch. D. 476, T. A., 1894, s. 4; *Re Chapman*, [1896] 2 Ch. 763. As to a valuer's liability for negligence, see *Cann* v. *Willson*, 39 Ch. D. 39; and as to the responsibility of a solicitor, see *Dooby* v. *Watson*, 39 Ch. D. 178; *Blyth* v. *Fladgate*, [1891] 1 Ch. 337; *Brinsden* v. *Williams*, [1894] 3 Ch. 185. By s. 8, sub-ss. 2 and 3, of the T. A., 1893, a trustee is exonerated from liability in respect of the title to the mortgaged property for dispensing with the lessor's title in the case of leaseholds, or (whatever the nature of the property) accepting a shorter title than that which the purchaser is, in the absence of a special contract, entitled to require, if the Court should think that the title is such as a person acting with ordinary prudence and caution might have accepted. By s. 8, sub-s. 4, that section is to apply to transfers of existing securities as well as to new securities.

As to title.

The above precedent might be shortened by omitting recitals; see as to this and other matters the notes to Precedent I.

Registered land.

As to registered land, see note pp. 1 *et seq.*, and the last Precedent; and as to precautions to be taken by a mortgagee of unregistered land, see p. 4.

yr on the ppal moys for the time being remaing due on this secy. AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd, the sd A., **as benefl owner**, doth hby grt unto the sd B., C., & D., *pcls, see Vol. I.*, pp. 385 *et seq.*, TO HOLD the same UNTO & TO THE USE of the sd B., C., & D., their hrs & assns, *subjt to leases, see last Precedent,* & subjt to the provo for redmon hinafter contd: PROVD ALWAYS, & it is hby agrd that if the sd A., his hrs, exs, ads, or assns, shl, on the sd —— day of —— next, pay to the sd B., C., & D., their exs, ads, or assns, the sd sum of £——, *the ppal,* with intt thron in the meantime at the rate afsd, the sd B., C., & D., their exs, ads, or assns, shl at any time thrafter upon the reqt & at the cost of the sd A., his hrs, exs, ads, or assns, reconvey the sd premes hinbfe grted to the use of the sd A., his hrs & assns. [*Covt agst registron,* p. 50, *form* XXXVI.] *If bldgs form a material pt of this secy, add a covt to insure & repair,* p. 42, *form* XXIX., *or* p. 45, *form* XXX. [*Add, if thought pper, the jt acct clause,* p. 37 (*a*), *& the clause as to devolon of the powers,* p. 61], *indemnity clause,* p. 59, *form* XLIV. IN WITS, &c.

Further witnesseth.

Habendum.

Proviso for redemption.

III.

MORTGAGE *of* COPYHOLDS *by* ONE MORTGAGOR *to* ONE MORTGAGEE *where the* DEED PRECEDES *the* SURRENDER. VARIATIONS *for a mortgage to* TRUSTEES, *and where* RECITALS ARE OMITTED (*b*).

PREC. III.

PARTIES, A., *mtgor,* 1; B., *mtgee,* 2; WHAS at a ct holden for the manor of —— in the coy of ——, on the —— day of ——,

Recitals. Admittance of mortgagor.

(*a*) As to this clause, see p. 37, note. The statutory power of sale is relied on, see p. 20, note. As to excluding or restricting the mortgagor's leasing powers under the C. A., s. 18, see p. 46, note; and as to excluding s. 17 abolishing the right of consolidation, see p. 59 note. It is clear that trustees would not incur any responsibility by not excluding the application of the two latter provisions, or by relying on the statutory powers of sale, &c., having regard to s. 66 (3) of the Act, which affords them full protection.

(*b*) See the notes to Precedents I. and II. In a mortgage of copyholds the deed should precede the surrender as in this Precedent; otherwise it would not be a "mortgage" within the C. A., 1882, s. 2, so as to enable the statutory

Deed should precede surrender.

PREC. III.

the sd A. was admitted (*a*) to the hds hby mtged to hold at the will of the lord accdg to the custom of the sd manor of —— (*b*):

Agreement for loan.

AND WHAS the sd B. has agrd with the sd A., to lend him the sum of £—— upon havg the repaymt thof with intt at the rate hinafter mentd secd in mner hinafter appearg:

Witnesseth.

NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, &c., &c., *conson, rect, covt by A. to pay ppal & intt after default as in Precedent I.*, p. 68.

Also witnesseth.

AND THIS INDRE ALSO WITNETH that in further psuance of the sd recited agrmt & for the conson afsd the sd A. **as benefl owner** (*c*) doth hby covt with the sd B. that he the sd A., or his hrs and all other necy pties, if any, will forthwith, at his or their own cost, surrender into the hands of the lord or lords of the sd manor, accdg to the custom thof (*d*), *pcels, referrg, if need be, to a schdle or plan, or both, see Vol. I.*, pp. 387 *et seq.* [to wch premes the sd A. was admitted at a ct holden, &c., *or*, "out of ct" on the —— day of

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covenants for title to be implied under s. 7, or the statutory powers of sale, &c., to be implied under s. 19; the insertion in that case of some words amounting to a charge within the definition of "mortgage" in s. 2 might obviate both these objections, see p. 21, note; p. 63, note; but as a mortgage in the latter form has no advantages, a precedent of it is not given. As to enfranchisement, see the Copyhold Act, 1894, Parts I., II., and III.

As to omitting recitals.

For brevity, recitals may be omitted, in which case the words at the beginning of the witnessing parts referring to the agreement will be omitted, and instead of "the sd manor" say "the manor of ——, in the coy of ——" the first time it is mentioned.

The variations for a mortgage to trustees are for the most part indicated in the last Precedent. In other respects they will be merely the substitution of the plural.

(*a*) *Or*, "WHAS on the —— day of ——, the sd A. was out of ct admitted, &c."

Mortgagor's seisin of copyholds.

(*b*) Or recite A.'s seisin as follows:—"WHAS the sd A. is seised for an unincumbered este of inhance to him & his hrs of the hds hby mtged at the will of the lord accdg to the custom of the manor of —— in the coy of ——."

(*c*) See p. 62, note. The statutory covenants for title may be implied, as the word "conveyance" in the Act includes a covenant to surrender made by deed (see s. 2).

(*d*) For several manors say "into the hands of the lords of the manors of wch the same are resply holden as hinbfe is recited accdg to the customs thof," and in the habendum, "to be holden of the lords of the respive manors of wch the same are resply holden by copy of ct roll accdg to the custom thof resply."

—— (*e*)] To the use of the sd B., his hrs & assns, to be holden of the lord of the sd manor by copy of ct roll accdg to the custom thof, by & under the rents, fines, suits, & services due & of rt accustomed for the same, Subjt to a condon for makg void the surrender to be made in psuance of this covt if the sd A., his hrs, exs, ads, or assns, shl, on the sd —— day of —— next, pay to the sd B., his exs, ads, or assns, the sd sum of £——, with intt for the same in the meantime at the rate afsd, And the sd A. doth hby declare that until such surrender shl be made, he, the sd A., his hrs & assns, shl stand seised of the sd premes hinbfe covted to be surrendered in trust for the sd B., his hrs & assns, subjt to such equity of redmon as the same premes wd have been subjt to if such surrender had been made, And doth hby irrevocably appt the sd B., his exs, ads, or assns, & every of them, the atty & attys of him, the sd A., in his name & on his behalf, at any time to surrender the sd premes psuant to the covt hinbfe contd, & to exte & do all instrumts & acts necy or pper for that ppose. *If bldgs form a material pt of the secy, add a covt to insure & repair,* p. 42, *form* XXIX., *or* p. 45, *form* XXX. (*f*). *Mtgee's indemnity clause,* p. 59. In wits, &c.

Habendum.

Proviso for redemption.

Declaration of trust till surrender.

IV.

SURRENDER *of* Copyholds *by way of* Mortgage. Variations *for a mortgage to* Trustees, *and where the security extends to* Further Advances (*g*).

PREC. IV.

Manor of ——
in the coy of —— } The —— day of ——.

BE IT REMEMBERED that on the day above mentd, A., of, &c., a customary tenant of the sd manor, came bfe me, X.

(*e*) If the admittance is recited this will of course be omitted.

(*f*) The power of sale is omitted in reliance on the statute, see p. 20, note.

(*g*) For variations where the mortgagor's wife concurs, see Vol. I., p. 444; but if the parties were married after 1882, or if they were married before 1883, but the property was acquired after 1882, the wife would be in the position of a *feme sole* by virtue of the M. W. P. A., 1882, ss. 1, 2, 5, and her separate examination would be unnecessary.

PREC. IV.

Surrender.

Habendum.

Subject to redemption.

[deputy] steward of the sd manor, & in conson of the sum of £—— to the sd A., pd by B., of, &c., [C., of, &c., & D., of, &c., out of moys belongg to them on a jt acct] (the rect whof is hrunder acknowed) did [out of ct] surrender into the hands of the lord of the sd manor, by the hands & acceptce of me the sd [deputy] steward by the rod accdg to the custom of the sd manor, *pcels, see Vol. I.*, pp. 385 *et seq.* TO THE USE of the sd B., his [B., C., & D., their] hrs & assns for ever, at the will of the lord accdg to the custom of the sd manor, subjt to the rents, fines, suits, & services due & of rt accustomed for the same; AND ALSO subjt to this condon, that if the sd A., his hrs, exs, ads, & assns, shl pay to the sd B., his [B., C., & D., their] exs, ads, or assns, the sum of £—— on the —— day of —— next, togr with intt for the same in the meantime at the rate of —— p.c. (*a*) p.a. (*b*), then this surrender is to be void & of no effect.

Signature of A.

Taken the day & yr above written by me, } X., [deputy] steward.

[*Rect for mtge moy.*]

(*a*) If interest is reducible on punctual payment, this will be the higher rate.

(*b*) Where the security is to extend to further advances, add, "& shl on such —— day of ——, or —— day of —— as shl happen next after the same resply shl be advced or pd or become owing, pay to the sd, *mtgee*, his [*mtgees*, their] exs, ads, or assns, every other sum of moy wch may be adveed by or become owing (except for intt) to [him or] them as afsd, with intt thron as afsd."

V.

MORTGAGE *of* LEASEHOLDS *by* DEMISE *by* ONE MORTGAGOR *to* ONE MORTGAGEE. VARIATIONS *for a* MORTGAGE *by* ASSIGNMENT, *where* RECITALS *are* OMITTED, *for a* MORTGAGE *to* TRUSTEES *or others advancing money on a* JOINT ACCOUNT, *and for* SEVERAL LEASES *and for a* MORTGAGE *by* ASSIGNMENT *of* REGISTERED LEASEHOLDS (*c*).

Recitals.

Lease (*d*).

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2. WHAS by an indre of lease dated, &c., & made, &c., all, &c., *pcels in full*, with

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Mortgage of leaseholds by supplemental deed.

(*c*) See the notes to Precedent I. Recitals might in this case be dispensed with by treating the mortgage as annexed or supplemental to the lease, or to the assignment thereof to the mortgagor: see the C. A., 1881, s. 53, Vol. I., p. 74, note. This may be done by adding the following words after the parties: "intd to be read as annexed or supplemental to an indre dated, &c., & made, &c., being a lease of certn messes, lands & hds situate, &c. to the sd A. for a term of —— yrs at the yrly rent of £——:" *or*, "being an assnmt to the sd A. of a lease dated, &c., of certn messes, &c., situate, &c." In that case the lease will be afterwards referred to as "above mentd."

If an interpretation clause is used in this case (see p. 61, note), both the "mtgor" and "mtgee" will be defined to include his "exs, ads, & assns."

Variations for mortgage to trustees.

The variations for a mortgage to trustees or others lending on a joint account are for the most part indicated in Precedent II.; in other respects they will be merely the substitution of the plural.

Registered land.

If the lessee is registered as proprietor a registered charge may be taken, or if the mortgage is made by assignment a registered transfer may be taken, but in the latter case the mortgagor must protect himself by a caution. If the mortgage is made by demise a notice of it as a lease may be entered under L. T. A., 1875, s. 50, though the mortgagee cannot be registered as proprietor, L. T. A., 1875, s. 11; L. T. A., 1897, sched. As to precautions to be observed by a mortgagee of unregistered lands, see p. 4, note.

As to mortgaging leaseholds by demise.

As to the practice of taking mortgages of leaseholds by sub-demise instead of by assignment, see Elph. Introd. 174. Although this course is proper where the covenants are unusually onerous and is sometimes convenient where the lessor's licence to an assignment, but not to a demise, is necessary, it may be doubted whether the practice (which is very general) is not carried too far, and whether the inconveniences incident to leaving a legal reversion outstanding in the mortgagor do not in ordinary cases outweigh the advantages of the practice, seeing that the mortgagee, though protected from being sued on the covenants, may be compellable to perform them to save his security from forfeiture under

Variations for several leases.

(*d*) Where there are several leases, they will be recited separately, or occasionally the recitals may be combined, as in Vol. I., p. 365, form XXXVII. For variations in the recital of the devolution of the title to the mortgagor in that case, see Vol. I., p. 365, form XXXVIII.; p. 366, form XL.

Devolution of title to lease.

Agreement for loan.

Witnesseth.

Also witnesseth.

the appurts thof were demised to the sd A. [X.], his exs, ads, & assns, from the —— day of ——, for the term of —— yrs, subjt to the paymt of the rent thby reserved, & the pformce & observce of the covts on the pt of the lessee & condons thrin contd: [AND WHAS by divers mesne assurces, acts in the law, & events, & ultimately by an indre dated, &c., & made, &c., the premes comprd in the sd indre of lease have become absolutely vested in the sd A. for all the residue of the sd term of —— yrs, subjt to the rent reserved by & covts & condons contd in the sd lease:] (*d*) AND WHAS the sd B. has agrd with the sd A. to lend him the sum of £—— upon havg the repaymt thof with intt at the rate hinafter mentd secd in mner hinafter appearg (*e*): NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, &c., *conson, rect, covt for paymt of ppal, & intt after default, as in Precedent* I., p. 68; AND THIS INDRE ALSO WITNETH that in further psuance of the sd recited agrmt, & for the

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the proviso for re-entry. Where a lease is of such a nature as to render it undesirable to take the mortgage by assignment, it can scarcely be a suitable security on which to lend money at all.

As to disclaimer of lease and vesting order in bankruptcy.

It is also to be remembered that in the event of the bankruptcy of the mortgagor the lease (if the mortgage is by sub-demise, *secus* if by assignment, *Re Gee*, 24 Q. B. D. 65) is liable to be disclaimed by the trustee in bankruptcy, so that the mortgagee may have to choose between losing his security and having the lease vested in him by order of the Court; see the Bankruptcy Act, 1883, s. 55, sub-ss. 1, 2, 3, 6; *Re Finley*, 21 Q. B. D. 475; see also *Ex parte Turquand*, 14 Q. B. D. 405; *Re Cock, Ex parte Shilson*, 20 Q. B. D. 343; *Re Smith, Ex parte Hepburn*, 25 Q. B. D. 536; 42 Sol. J., 210, 228. It has not been decided what is the mortgagee's position when an order vesting the original lease in him has been made (*Re Morgan*, 22 Q. B. D. 592), the words of the Act being that such an order shall only be made "upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed;" see 33 Sol. J., p. 537. By the Bankruptcy Act, 1890, s. 13, however, the Court is empowered to make the person in whose favour the vesting order is made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the bankruptcy petition was filed; and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

As to taking a second mortgage of leaseholds by demise, see 2 Dav. Prec., pt. 2, 444, note.

(*d*) For a mortgage by assignment, where the lessee is registered as proprietor, add "AND WHAS the sd A. is regrd as proptor of the sd leasehd hds with a —— title under the no. —— hinafter mentd."

(*e*) In the case mentioned in note (*d*), add "& by a regrd transfer of the sd leasehd hds: AND WHAS in psuance of the sd recited agrmt the sd A. hath transferred the sd leasehd hds to the sd B."

conson afsd, the sd A., **as benefl owner,** doth hby demise (*f*) unto the sd B., ALL & SINGR the hds & premes comprd in or demised by the hinbfe recited indre of lease of, &c., *see Vol. I.*, p. 389 (*g*). TO HOLD the same UNTO the sd, his exs, ads, & assns, henceforth for the residue now unexpired of the sd term of —— yrs (*b*), except the last day thof (*c*); SUBJT to the provo for redmon hinafter contd; PROVD ALWAYS, & it is hby agrd & decld that if the sd A., his exs, ads, or assns, shl on the sd —— day of —— next pay to the sd B., his exs, ads, or assns, the sd sum of £——, *the ppal*, with intt thron in the meantime at the rate afsd, the said B., his exs, ads, or assns, shl at any time thrafter, upon the reqt & at the cost of the sd A., his exs, ads, or assns, surrender or assn (*d*) the sd premes hinbfe demised (*d*) to the sd A., his exs, ads, & assns: AND the sd A. doth hby declare that he the sd A., his exs, ads, & assns, shl henceforth stand possed of the nominal revon hby reserved of the sd term of —— yrs (*f*) in trust for the sd B., his exs, ads, & assns, subjt to such equity of redmon (if any) as may for the time being be subsistg by virtue of these psnts, AND doth hby irrevocably appt the sd B., his exs, ads, & assns, & every of them, the atty & attys of him the sd A. in his name & on his behalf at any time to assn the same nominal revon to the sd B., his exs, ads, & assns, or as he or they shl think fit, subjt to the equity of redmon (if any) for the time being subsistg as

Haben-dum.

Proviso for redemption.

Declara- of trust of nominal reversion (*e*).

(*f*) If the mortgage is by assignment, say "assn."

(*g*) In the case mentioned in note (*d*), p. 76, add "being the leasehd land, &c." Vol. I., p. 387, form VIII., "& so that the descriptn contd in the sd title shall not restrict the generality of the descriptn hinbefore contd, but may enlarge the same."

(*b*) For several leases say, "sevl residues now unexpired of the sevl terms of yrs grtd by the sd sevl indres of lease," adding if the mortgage is by demise, "except the last day of each such respive term."

(*c*) In mortgage by assignment omit "except the last day thof."

(*d*) In mortgage by assignment, "re-assn," instead of "surrender or assn," and "assned," instead of "demised." For a mortgage by assignment where the lessee has been registered, add after "demised," "& execute a transfer thof & deliver the office copy lease thof."

(*e*) This clause will be omitted in a mortgage by assignment.

(*f*) For several leases say "revons hby reserved of the sevl terms for wch the sd respive premes hinbfe demised are resply held under the sd respive leases."

PREC. V. afsd, & to éxte & do all deeds, instrumts, & acts necy or pper for that ppose (*g*). *Add power to mtgee to appt a new tree of nominal revon, p.* 31, *form* II. [*Covt agst registron,* p. 50, *form* XXXVI.] [*Power to sell leaseholds in lots by way of underlease,* p. 29, *form* XIV.] *Mtgee's indemnity clause,* p. 59. IN WITS, &c.

VI.

PREC. VI. DEED *of* STATUTORY MORTGAGE *under the* 26*th section of the* CONVEYANCING ACT, 1881 (*a*).

THIS INDRE made by way of statutory mtge, the —— day of ——, 18—, BETN A., *mtgor,* of the one pt, & B., *mtgee,* of the other pt, WITNETH, that in conson of the sum of £—— now pd to A. by B., of wch sum A. hby acknowes the rect, A. as mtgor & **as benefl owner** hby conveys to B., *pcels,* TO HOLD (*b*) TO & TO THE USE OF B. in fee simple for securg paymt on the —— day of ——, 18—, of the ppal sum of £—— as the mtge moy, with intt thron at the rate of —— p.c. p.a. IN WITS, &c.

(*g*) If appropriate, add a covenant to insure and repair (which must of course conform to the provisions, if any, for insurance in the lease), see p. 42, form XXIX., or p. 45, form XXX. The power of sale is omitted in reliance on the statute.

Statutory mortgage under C. A., 1881, s. 26.

(*a*) This is the form of mortgage given in the third schedule to the C. A., 1881, which, besides its operation in implying powers of sale, &c., and covenants for title under the Act, has also a special operation by virtue of s. 26, which enacts that there shall be deemed to be included and shall be implied, in a mortgage of freehold or leasehold land made in the form in that schedule, a covenant with the mortgagee, by the person expressed to convey as mortgagor, for payment of the mortgage money with interest at the stated rate, and for payment of interest after default, and the usual proviso for redemption. The mortgage may be made with such variations and additions as circumstances may require. The use of the statutory form of mortgage would enable the short statutory forms of transfer in the second part of the schedule (see *infra*) to be used; but the inconvenience attending the use of statutory forms is such, and the advantage so inconsiderable, that the form (though it is to some extent used) is not recommended for general use.

Variation for leaseholds.

(*b*) For leaseholds say, "TO HOLD unto the sd B., his exs, ads, & assns henceforth for all the residue now unexpired of a term of —— yrs grted by an indre of lease dated, &c., & made, &c. [*if by demise add,* 'except the last day of such term'] for securg, &c., *as in text;*" *if by demise add, declon of trust of nominal revon, &c.,* p. 30.

VII.

MORTGAGE IN FEE *of* FREEHOLDS *by* ONE MORTGAGOR *to* ONE MORTGAGEE (*c*). PROVISIONS *for* REDUCTION *of* INTEREST *on punctual payment and for continuance of loan for a* TERM CERTAIN. PROVISIONS *as to* GUARANTEE POLICY *effected with a* MORTGAGE INSURANCE COMPANY. POWER *to* MORTGAGOR *and to* MORTGAGEE *when in possession to grant* LEASES. APPOINTMENT *of a* RECEIVER. VARIATIONS *where the principal is to be repaid by* INSTALMENTS, *where the security extends to* FUTURE ADVANCES (*d*), *and where the* STATUTORY POWERS *of* SALE *and* LEASING *and* APPOINTING *a* RECEIVER *are relied on with modifications.*

PREC. VII.

Parties, A., *mtgor*, 1; B., *mtgee*, 2; [C., *recer*, 3]; *Recite title of mtgor to*, "the hds hby mtged," *as in a convce on sale,*

(*c*) As to registered land, see p. 1, note (*a*); as to unregistered land, see pp. 3, 4, note.

Effect of second mortgage on future advances by first mortgagee.

(*d*) Although the security extends to future advances, the mortgagee cannot safely make any after notice of a subsequent incumbrance, unless the subsequent incumbrancer has agreed in the most express terms that such advances may be made, see *Hopkinson* v. *Rolt*, 9 H. L. C. 514; *Daun* v. *City of London Brewery Co.*, 8 Eq. 155; *Menzies* v. *Lightfoot*, L. R. 11 Eq. 459; *Bradford Banking Co.* v. *Briggs & Co.*, 12 App. Cas. 29; 2 Dav. Prec. part 2, p. 380, note; even if the further advances are made pursuant to a covenant in the mortgage, *West* v. *Williams*, [1899] 1 Ch. 132.

Registered land.

Notwithstanding the provisions of L. T. A., 1875, s. 83; L. T. A., 1897, sched., probably the doctrine of *Hopkinson* v. *Rolt* applies to further advances made by the registered proprietor of a charge for further advances. It follows that it will be prudent for a person who takes a registered charge for future advances to search the register immediately before making the advance, and to have the registered charge altered under L. T. A., 1897, s. 9 (5); see L. T. R., 111, so as to show the amount actually secured. A stipulation inserted in the subsequent charge preserving the priority of future advances made under the original charge will be effectual. It appears, however, that if the second incumbrancer has not taken a registered charge, and has not protected his incumbrance by an entry on the register, and the future advance is secured by an entry on the register, it will obtain priority. Perhaps the better plan will be to take a registered charge for the full amount to be advanced, and an unregistered deed in the usual form for a mortgage for further advances. This course must be adopted where the future advances are to be made by the executors of the mortgagee, see L. T. R., form XLI., which does not apply to such advances. The mortgagee should obtain possession of the land

Witnesseth.

Covenant for payment.

Also witnesseth.

Grant.

Vol. I., p. 370 *et seq.*; *Agrmt for loan*, p. 4, *form* IV.; *Recital of guarantee poly*, p. 5, *form* X.; *Genl agrmt to enter into covts*, p. 8, *form* XXIII.; NOW THIS INDRE WITNETH, that in psuance of the sd agrmt & in conson of the sum of £—— now pd to the sd A. by the sd B., the rect, *&c.*, *covt to pay ppal*, p. 9, *or if the secy extends to future advces*, p. 10, *form* V., *& to pay intt after default*, p. 10, *form* II., *the intt in each case being made payable at the higher rate*; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd the sd A., **as benefl owner**, doth hby grt unto the sd B., *pcels, see Vol. I.*, pp. 385 *et seq.*; *Habendum*, p. 14 (*a*); *Provon for redmon*, p. 16; *or if the secy extends to future advces*, p. 17, *form* VII.; *Provo for redon of intt on punctual paymt*, p. 31; *For continuce of loan for a term certn*, p. 33; *And if so intd, provo that mtgor shl not pay off for a term certn*, p. 33 [*or, Provo for paymt by instalmts*, p. 33]; *If bldgs form a material pt of the secy, add covt to insure & repair*, p. 42, *form* XXIX., *or* p. 45, *form* XXX.; *Covt as to guarantee poly*, p. 38, *form* XXIII.; [*Power to mtgor, & if desired to mtgee when in posson, to grt leases*, p. 46; *or, clause restrictg statutory power to grt leases*, p. 48]: [*Clause modifying statutory power of sale*, p. 27]; [*Covt agst registron*, p. 50, *form* XXXVI.]; *Mtgee's indemnity clause*, p. 59; [*Apptmt of recer*, p. 52; *or the short form by referce to the statute*, p. 56]. IN WITS, &c.

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certificate, so as to be certain that no subsequent charge can be registered without his knowledge.

Perhaps the safer plan will be to take a registered transfer of the land, and to protect the mortgagor by a caution.

Stamp.

Where the mortgage is to secure future advances, the *ad valorem* stamp should be sufficient to cover the total amount, if limited; if not limited, the security is available only for the amount which the *ad valorem* stamp extends to cover: see Stamp Act, 1891, s. 88; but by the effect of sub-s. (2), if an advance is made in excess of the amount, the stamp may be then added to.

Special habendum giving power to mortgagor to lease.

(*a*) Where the mortgage reserves express leasing powers to the mortgagor, the following form of habendum is sometimes used, though it is clearly unnecessary: "to the sd, *mtgee*, & his hrs TO THE USE & intent that the sd, *mtgor*, his hrs & assns, may exercise the powers of leasg hinafter contd, & subjt to such powers, & to any leases grted in psuance thof, TO THE USE of the sd, *mtgee*, his hrs & assns, &c."

VIII.

PREC. VIII.

SECOND MORTGAGE (*b*) *of* COPYHOLDS *and renewable* LEASEHOLDS (*d*). A SURETY *joining to covenant for* PAYMENT *of principal and interest* (*e*). VARIATIONS *where the mortgage extends to* FURTHER ADVANCES (*f*).

PARTIES, A., *mtgor*, 1; B., *surety*, 2; C., *mtgee*, 3; *Recite the lease as in a convce on sale, Vol. I.*, p. 364, *settg out the*

As to the legal estate.

(*b*) As to the importance of getting the legal estate as a protection against prior concealed incumbrances of which the mortgagee has no notice (actual or constructive), and against the possibility of a subsequent incumbrancer without notice getting priority by means of it, and as to the doctrine of tacking, see 2 White & T. L. C. Eq. notes to *Marsh* v. *Lee;* Fisher on Mortgages, 534, 539; Dart, V. & P., pp. 927—946. Notice should be given to prior incumbrancers so as to prevent them from tacking further advances or paying the surplus proceeds of sale to the mortgagor: *West London Commercial Bank* v. *Reliance, &c., Society*, 27 Ch. D. 187; 29 Ch. D. 954; and if possible the notice should be indorsed on prior charges, so as to render it certain that transferees of those charges will take with notice. As to the doctrine of constructive notice as altered by the C. A., 1882, s. 3, see Dart, pp. 988 *et seq.* As to the security afforded by registration in Middlesex and Yorkshire, see id. pp. 958 *et seq.*

As to the deeds.

As to the importance of making proper inquiry for and getting the title-deeds, see 2 Dav. Prec., part ii., p. 238; Dart, pp. 950 *et seq.* But the security afforded by the possession of the deeds, though practically almost complete, is lessened by the doctrine that a mortgagee failing to get them is not necessarily to be postponed; see the statement of the doctrine as affecting legal mortgagees in *Northern, &c., Co.* v. *Whipp*, 26 Ch. D. 482; *Re Ingham*, [1893] 1 Ch. 352; and as between equitable mortgagees in *National Provincial Bank of England* v. *Jackson*, 33 Ch. D. 1; and see an instance in *Manners* v. *Mew*, 29 Ch. D. 725.

Risks incurred by equitable mortgagee.

For examples of the risks arising from not obtaining the legal estate, see *Carritt* v. *Real and Personal Advance Co.*, 42 Ch. D. 263, where a trustee, in

Mortgages of renewable leaseholds.

(*d*) Renewable leaseholds should be mortgaged by assignment, not by demise. In the case of ordinary leaseholds, if the first mortgage is by demise there is no objection to a second mortgage being also by demise. As to the rights of a mortgagee of a renewable lease on purchase of the reversion by the mortgagor, see *Leigh* v. *Burnett*, 29 Ch. D. 231.

Law of suretyship.

(*e*) As to law of suretyship, see *ante*, Vol. I., p. 40, note (*a*), and pp. 214, 215, note; Vol. II., p. 37. As to the rights of the surety where further advances are made, see *Forbes* v. *Jackson*, 19 Ch. D. 615. As to the rights of co-sureties *inter se*, see *Berridge* v. *Berridge*, 44 Ch. D. 168.

(*f*) As to securities for further advances and the stamp duty thereon, see p. 79, note (*d*).

PREC. VIII.

Witnesseth.

Also witnesseth.

Assignment.

Also witnesseth.

Covenant to surrender copyholds.

pcels & covt for renewal; The devolon, if any, of title to A., Vol. I., p. 366; *The prior mtge,* p. 5, *settg out the assnmt of the leasehds, subjt to redmon, & the covt to surrender the copyhds; Condonal surrender of the copyhds,* p. 6; *Agrmt for loan,* p. 1, *or for further advces,* p. 4; *Agrmt for surety to join,* p. 4; NOW THIS INDRE WITNETH, *conson, rect, jt & sevl covt by A. & B. for paymt of ppal, & intt after default,* p. 10, *form* III., *or for further advces,* p. 10; *Provo restrictg liability of surety,* p. 38, *form* XXI.; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & for the conson afsd, the sd A. **as benefl owner,** doth hby assn unto the sd C., *leasehd pcels by referce, Vol. I.,* p. 389, "togr with all such rt to the renewal of the sd lease of the —— day of —— as is subsistg by virtue of the covts & provons thrin contd or orwise," *habendum, subjt to the prior mortgage,* p. 14, *note;* PROVD ALWAYS, & it is hby agrd, that if the sd, *mtgor,* his hrs, exs, ads, or assns, or the sd, *surety,* his hrs, exs, or ads, shl, &c., *continue provo for redmon for leasehds,* p. 17, *form* III., *or for further advces,* p. 17, *form* VII., *addg at the end,* "subjt nevs to the rts of the sd, *surety,* his exs or ads, in case the moys hby secd, or any pt thof, shl be pd by him or them;" AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & for the conson afsd, the sd A., **as benefl owner,** doth hby, &c *covt to surrender copyhds,* p. 72, *pcels, Vol. I.,* p. 386; TO THE USE of the sd C., his hrs & assns, *condon for makg void the surrender,* p. 17, *form* VI., "& subjt also to the

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whose name a conveyance had been taken without disclosing the trust, having made a fraudulent mortgage by deposit, the equity of the cestui que trust was preferred to that of the mortgagee (but, such a fraud would be scarcely possible if the mortgagee made proper inquiries); and *Newton* v. *Newton*, L. R. 6 Eq. 135 (reversed on the facts, 4 Ch. 143), where a trustee mortgagee (the trust not being disclosed) having sub-mortgaged by deposit, the equity of the cestui que trust was held to prevail. That a cestui que trust has no better equity than his trustee, where the latter is guilty of negligence as to the deeds, see *Lloyd's Banking Co.* v. *Jones*, 29 Ch. D. 221; *Farrand* v. *Yorkshire Banking Co.*, 40 Ch. D. 182. As to the right of a trustee who takes a mortgage of the equitable interest of his cestui que trust to avail himself of his legal estate, see *Newman* v. *Newman*, 28 Ch. D. 674. As to the circumstances under which a second equitable mortgagee with notice of a first equitable mortgage may by getting in the legal estate from a prior legal mortgagee acquire priority, see *Taylor* v. *Russell*, [1892] A. C. 244, affirming S. C. [1891] 1 Ch. 8; see also *West London Commercial Bank* v. *Reliance, &c., Society*, 29 Ch. D. 954; and 36 Sol. J. 376.

sd condonal surrender of the —— day of —— & the moys thby secd;" *Declaron of trust of copyhds till surrender*, p. 30, "& subjt also to the sd condonal surrender, &c.," *as above, & power of atty*, p. 30; *Covts by A. for renewal, &c.*, p. 45, *in the clause as to assng the renewed lease to the mtgee say*, "subjt to such equity of redmon as shl then be subsistg by virtue of these psnts, & subjt to the sd indre of mtge of the —— day of ——, & the moys thby secd, & that until such assnmt shl be made the sd A., his exs, ads, & assns, shl stand possed of the renewed lease subjt to the sd indre of mtge of the —— day of ——, & the moys thby secd in trust, &c.;" *in the power to the mtgee to obtain a renewal say*, "in his or their own name or names, or in the name or names of the pson or psons then entled to the moys secd by the sd indre of mtge of the —— day of —— or orwise;" *To insure & repair if applicable*, p. 42, *form* XXIX., *or* p. 45, *form* XXX.; *Mtgee's indemnity clause*, p. 59; *Provo as to primary liability betn A. & B.*, p. 37, *form* XVIII.; *Provo that C. shl not be affected by such declaron*, p. 37, *form* XIX; *Declaron that B. shl be liable as ppal debtor*, p. 37, *form* XX. (*a*); *Addition to statutory power of sale in second mtge*, p. 29, *form* XV.; *Covt agst registron of leasehds*, p. 50, *form* XXXVI. [*If ppty in lease may have to be sold in lots, add power to sell leasehds by way of underlease*, p. 29, *form* XIV. IN WITS, &c. (*b*).]

Right of mortgagor to inspect deeds.

(*a*) The mortgagor (including any person deriving title under the original mortgagor or entitled to redeem, C. A., 1881, s. 2 (vi.); *Teevan* v. *Smith*, 20 Ch. D. 724, 730), has the right to inspect, &c., title deeds in the hands of the mortgagee, see C. A., 1881, s. 16; 33 Sol. J. 707. This section applies only where the first mortgage was made after 1881; s. 16, sub-s. (2).

As to notice to first mortgagee.

(*b*) Notice to be given to the prior mortgagee, the object being to ensure that the surplus proceeds of a sale by the prior mortgagee shall be paid to the second mortgagee, and also that the latter shall get the legal estate and the deeds on the first mortgage being discharged; as to this, and as to the right of the second mortgagee in such a case to a transfer of the legal estate notwithstanding s. 15 of the C. A., 1881, see *Teevan* v. *Smith*, *ubi supra*; *West London, &c., Bank* v. *Reliance, &c., Society*, 27 Ch. D. 187; 29 Ch. D. 954.

IX.

PREC. IX.

MORTGAGE *of* FREEHOLDS *and* COPYHOLDS. A PRIOR MORTGAGEE *of the* FREEHOLDS *joining to* POSTPONE *his Security* (*a*).

Recitals. Witnesseth. Also witnesseth. Grant. Proviso for redemption.

Parties, A., *mtgor*, 1; B., *prior mtgee*, 2; C., *mtgee*, 3. *Recite mtge by A. to B. of freehds settg out the convce & provo for redmon, Vol. I.*, p. 358; *Admttce of A. to copyhds, Vol. I.*, p. 358; *Agrmt for loan from C. to A.*, p. 1. AND WHAS the sd B. has at the reqt of the sd A. agrd to postpone his afsd secy to the secy hby effected in mner hinafter appearg: *First testatum as in Precedent I., Covt by A. for paymt*, p. 9, *& intt after default*, p. 10; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & for the conson afsd, the sd B., **as mtgee,** doth hby at the reqt of the sd A. grt & rele (*b*), & the sd A., **as benefl owner,** doth hby grt & confirm unto the sd C., *pcels, Vol. I.*, pp. 385 *et seq.*, *habendum to C. in fee*, p. 14, dischgd from the sd sum of £——, *the prior mtge debt*, & all intt due & to grow due for the same, & the secs for the same, & from all claims & demands under or by virtue of the hinbfe recited indre of the —— day of ——, but subjt to the provo for redmon hinafter contd: *Provo for redmon*, p. 16.

(*a*) As to a promise by the mortgagor being implied, to indemnify the mortgagee against any loss resulting from the postponement of his security, see *Ex parte Ford*, 16 Q. B. D. 305; as to the risks incident to a second mortgage, see the references above, p. 81.

(*b*) If the prior charge were equitable only, it would be sufficient to insert a clause postponing it, in lieu of the prior mortgagee being made a conveying party.

Variations where prior mortgage comprises other property.

If the prior mortgage comprises other property, the operative part will run:—

"The sd A. **as benefl owner** doth hby grt, & to the intent to postpone the secy or secs for the sd sum of £—— & intt so far as relates to the hds hby grted to the secy hby made the sd B. as mtgee, doth hby grt & confirm unto the sd C., &c.," and add, after the *proviso for redemption*, "Provd always that nothing hrin contd shl prejudice or affect the secs for the sd sum of £—— & intt except so far as regards the sd hds comprd in this psnt secy, and so far as regards such last-mentd hds shl not prejudice or affect the same any further than by the postponemt thof to this psnt secy."

the reconve to be, "to the use of the sd B., his hrs & assns, subjt to such rt or equity of redmon as the same premes wd, if these psnts had not been exted, have been for the time being subjt to by virtue of the hinbfe recited indre of the —— day of —— on paymt of the sd sum of £—— & intt thby secd, & with the same power of sale & other powers & authorities in all respts as wd have been subsistg, or might have been exercised, if these psnts had not been exted:" AND THIS INDRE ALSO WITNETH that in psuance of the sd recited agrmt, & for the conson afsd, *Covt by A. to surrender copyhds to the use of C., subjt to redmon as in Precedent III.*, p. 72 (*c*); *Declon of trust till surrender*, p. 30; *Covt to insure & repair if appropriate*, p. 42, *form* XXIX., *or* p. 45, *form* XXX; PROVD ALWAYS, & it is hby agrd & decld that if on a sale of the sd freehd premes hby mtged or any pt thof under the power of sale vested in the said C., his exs, ads, or assns, by virtue of these psnts, & the statute in that behalf, there shl remain any surplus after the dischge of all moys hby secd, such surplus shl be pd to the sd B., his exs, ads or assns, as such mtgee or mtgees as afsd, whose rect shl be a sufft dischge for the same; *Covt agst registron of freehds*, p. 50, *form* XXXVI. (*d*), *mutatis mutandis; Mtgee's indemnity clause*, p. 59 (*f*). IN WITS, &c.

Further witnesseth.

Clause as to surplus proceeds of sale of freeholds (*e*).

(*c*) If it were not for the special form of the proviso for redemption of the freeholds in this case, arising from the existence of the mortgage to B., the covenant would be to surrender the copyholds subject to redemption as in form VI., p. 17.

(*d*) See note, pp. 3, 4. As to registered land, see note, p. 1.

(*e*) Probably this clause may be safely omitted.

(*f*) If the prior mortgagee retains his mortgage securities, he should give an acknowledgment for production thereof, and notice of the postponement should be endorsed on his mortgage.

X.

PREC. X.

MORTGAGE *in* FEE *by* TWO PERSONS *under a joint* POWER *of* APPOINTMENT, *subject to prior* CHARGES. *The* PRINCIPAL *to be repaid by* INSTALMENTS.

Recitals. Settlement.

PARTIES, A. & B., *mtgors,* 1; C., *mtgee,* 2; WHAS by an indre dated, &c., & made, &c., the hds hinafter appted & assured, togr with other hds, were assured & limd subjt to certain annies or rent-chges of £—— & £——, & the powers & remedies & terms of yrs for securg the same thrin mentd, & to an indre of mtge dated, &c., & made, &c., for securg the sum of £—— & intt, *or,* "subjt to the chges & incumbces wch are specified in the schdle hto," to such uses, &c., *settg out fully the jt power of apptmt to A. & B.,* & in default of and subjt to any such apptmt to the use of the sd A. & his assns durg his life, witht impeachmt of waste, with remr to the use of the sd B. & his assns durg his life witht impeachmt of waste, with divers remrs over; *Agrmt for loan to A. & B.,* p. 1. NOW THIS INDRE WITNETH, &c., *Conson, rect; Jt & sevl covt by A. & B. for paymt of ppal & intt after default,* p. 10; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd, the sd A. & B., **as benefl owners** (*a*), in exercise of the sd recited power, & of every or any other power in this behalf enablg them, do hby appt, & by virtue of their respive estes & intts & by way of further assurce do hby grt & confirm unto the sd C., *pcels, Vol. I.,* pp. 385 *et seq.*; *habendum to C. in fee subjt to redmon,* p. 14, *substitutg for the words in note* (*b*), "subjt to the sd annies or rent-chges of £—— & £——, & to the powers & remedies & terms of yrs for securg the same & to the sd mtge of the —— day of ——, & the sum of £—— thby secd, & the intt now due & henceforth to become due for the same," *or,* "subjt to the chges & incumbces specified in the schdle hto;" *Provo for redmon,* p. 19, *form* XII., "subjt to the sd prior chges or incumbces hinbfe mentd or refd to, & to wch the mtge hby made is hinbfe expd to be subjt, or such of them as shl be subsistg;" *Provo for paymt by instalmts,* "by the sd A. & B., or eir of them, their

Witnesseth. Covenant for payment. Further witnesseth. Appointment and grant. Habendum. Proviso for redemption. Payment by instalments.

(*a*) This implies absolute covenants for title by each mortgagor as to the entirety of the property, see p. 62, note.

or eir of their hrs, apptees, exs, ads, or assns," p. 33, *form* X., [*Power to anticipate instalmts*, p. 34, *form* XI.]; *Jt & sevl covts by A. & B., for insce and repair if appropriate*, p. 42, *form* XXIX., *or* p. 45, *form* XXX., *mutatis mutandis; Addon to statutory power of sale in 2nd mtge*, p. 29, *form* XV. *Covt agst registron*, p. 50, *form* XXXVI.; *Mtgee's indemnity clause*, p. 59. IN WITS, &c. (*b*).

[*Schdle.*]

XI.

PREC. XI.

MORTGAGE *by* HUSBAND *and* WIFE *married* BEFORE *the* MARRIED WOMEN'S PROPERTY ACT, 1882, *of the* FREEHOLDS *of the latter to secure the* HUSBAND'S *Debt.* VARIATIONS *where the* EQUITY *of* REDEMPTION *is limited to the* HUSBAND (*c*).

Recitals.

PARTIES, A., & B., his wife, 1; C., *mtgee*, 2. *Recital of seisin in fee of A. & B. in rt of the latter as in a convce on sale, Vol. I.*, p. 370, *form* III.; *agrmt for loan to A.*, p. 1: [AND WHAS the sd A., & B. his wife, are desirous & have agrd that the sd hds & the equity of redmon thof subjt to the mtge hby made shl be limd & assured to the use of the sd A., his hrs & assns, in mner hinafter expd, to the intent that the same may become his absolute ppty, freed from all rt, title, intt, or claim of the

Agreement that equity of redemption shall be limited to husband.

(*b*) See p. 83, note (*b*).

(*c*) As to the legal status of married women, and their powers of disposing of property, and contracting, prior to and since the M. W. P. A. 1882, see Vol. I., pp. 503 *et seq.*

The Precedent in the text is for a case in which the wife's power of disposition is governed by the old law, *i.e.*, where she was married, and her title to the property accrued before 1883. But although the old law applies as regards the wife's power of disposition, the new law applies as regards her power of contracting, and she may consequently enter into all the usual mortgage covenants, whether for payment, for title, or otherwise, as if she was a *feme sole*, to the extent of her existing or after-acquired separate property; and she is in this Precedent made so to covenant.

Powers of married women as to property and contracts.

The deed must be acknowledged by the wife; see as to acknowledgment, Vol. I., p. 499, note.

Also witnesseth.

Grant.

Proviso for redemption.

sd B., her hrs or assns (*a*)]; NOW THIS INDRE WITNETH that in psuance of the sd agrmt, *Conson*, p. 9, *form* I.; *Jt & sevl covts by A. & B. for paymt*, p. 10, *form* III.; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd the sd B., **as benefl owner**, with the concurrce of the sd A., doth hby grt & the sd A., **as benefl owner** doth hby grt & confirm unto the sd C. *pcels, Vol. I.*, pp. 385 *et seq.*; *habendum*, p. 14; Provd always, & it is hby agrd that if the sd A. or the sd B. his wife or their respive hrs, exs, ads, or assns, shl on the —— day of —— next pay, &c., *continue provo for redmon*, p. 16, "at the cost of the pson or psons requirg the same reconvey the sd premes hby mtged to the use of the sd B., her hrs or assns, [*or*, to the use of the sd A. his hrs or assns, to the intent, *&c., as above in the recital*];" *Add a declaron if appropriate that A. or B. & the mtged premes, accdg to the intention, shl be primarily liable to the paymt of the mtge moy*, p. 37, *forms* XVII., XVIII., *mutatis mutandis; & provo that this declaron shl not affect the mtgee*, p. 37, *form* XIX.; *Jt & sevl covts by A. & B. to insure & repair if appropriate*, p. 42, *form* XXIX., *or* p. 45, *form* XXX., *mutatis mutandis; Covt agst registron*, p. 50, *form* XXXVI. (*b*); *Mtgee's indemnity clause*, p. 59. In wits, &c.

XII.

PREC. XII.

MORTGAGE *by a* Married Woman *of* Leaseholds *which are her* Separate Property *under the* Married Women's Property Act, 1882 (*c*). Variations, *where the* Husband *joins to* Confirm *the* Wife's Title *and to* Covenant (*d*).

Parties, A., *married woman*, 1; [B., *husbd*, 2;] C., *mtgee*, 3. *Recite lease & assnmt thof to the wife since* 1882, *as in a*

(*a*) As to the reason for inserting this express recital of the intention, see Elph. Introd. 148. The transfer of the equity of redemption to the husband will not increase the stamp, see the Stamp Act, 1891, s. 87 (6).

(*b*) See note, p. 4.

(*c*), (*d*) For these notes see p. 89.

convce on sale, see Vol. I., pp. 364, 365, *the conson moy for the assnmt being stated to be pd*, "out of moys belongg to the sd A. as her septe ppty independently of her sd husbd" (*e*): *Agrmt for loan to A.*, p. 1; [*Agrmt of B. to join*, p. 4;] NOW THIS INDRE WITNETH, &c., *conson*, p. 9, *form* I., *covt by A. for paymt*, p. 9, *& intt after default*, p. 10, [*or jt & sevl covts by A. & B. for paymt*, p. 10, *form* III.;] AND THIS INDRE ALSO WITNETH, that in psuance, &c., & for the conson afsd the sd A., **as benefl owner** (*f*), doth hby demise [& the sd B., **as benefl owner** (*f*), doth hby confirm] unto the sd C., *pcels by referce to lease, Vol. I.*, p. 389, *habendum*, p. 14; PROVD ALWAYS, & it is hby agrd that if the sd A., her exs, ads, or assns [or the sd B., his exs or ads], shl, &c., *provo for redmon & reconvce to A.*, "as her septe ppty independently of her sd husbd, p. 17, *form* II.; *Declon of trust by A., of nominal revon & power of atty & of apptg new trees of nominal revon*, pp. 30, 31; [*If B. joins, add declon, if appropriate, as to primary liability to the mtge debt, &c., as in last Precedent*;] *Covt by A.* [*or jt & sevl covts by A. & B.*] *to insure & repair if appropriate* (*g*), p. 42, *form* XXIX. *or* p. 45, *form* XXX., *mutatis mutandis*; [*Covt agst registron*, p. 50, *form* XXXVI.]; [*If the ppty may have to be sold in lots, add power to sell leasehds in lots by way of underlease*, p. 29, *form* XIV.]; *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

Witnesseth.

Covenant for payment.

Also witnesseth.

Demise.

Proviso for redemption.

(*c*) When a married woman executes a mortgage of her property there is no obligation on the mortgagee to enquire whether a settlement was made on her marriage: *Lloyd's Banking Co.* v. *Jones*, 29 Ch. D. 221, 230.

(*d*) See p. 87, note (*c*). Where the title of the wife (whenever married) arose after 1882, her power of disposition is absolute, and her husband's concurrence is unnecessary, though he often concurs for the purpose of covenanting even where the loan is made to the wife.

Concurrence of husband.

(*e*) It will be better to show by the recitals that the wife's title accrued after 1882, either by reciting the deed or will under which it arose, or by a simple recital of her seisin or ownership referring to the deed or will, which may run as follows:—

"Whas the sd A. is seised or entled in fee simple in posson, *or*, 'is possed or entled,' as her septe ppty independently of her sd husbd, of or to the hds hby assured, free from incumbces, under an indre, &c., *or*, 'the will of X.' &c."

Recital of wife's title to her separate property.

(*f*) This implies the same covenants as in the last Precedent, see p. 62, note.

(*g*) See p. 77, note (*g*).

XIII.

PREC. XIII.

MORTGAGE *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *held under several leases, by the* TRUSTEES *of a* WILL (*a*). PROVISO *limiting the* LIABILITY *of the* TENANT *for* LIFE, *who* COVENANTS *for payment of the mortgage* MONEY, *as between* HIMSELF *and the* ESTATE. POWERS *of* LEASING *reserved to the* DONEE *of the* POWERS *of* LEASING *contained in the* WILL *by reference to such powers* (*b*).

Recitals.

Parties, A. & B., *trees,* 1; C., *tenant for life,* 2; D., E., & F., *mtgees,* 3. *Recite leases, Vol. I.,* p. 364; *And devolon* (*if any*) *thof to X., Vol. I.,* p. 365; *Will of X., devisg his freehds to uses in strict settlemt, under wch C. is tenant for life, noticg shortly the powers in the will for grtg leases, & settg out a power to the trees to raise moy by mtge in fee, with or witht power of sale, with the consent of the tenant for life, if of full age, for certn pposes; & clause provdg that the mtgee shl not be bound to see whether the moy is wanted, or whether more than enough is raised, devise of copyhds & beqt of leasehds to A. & B. upon trusts correspondg to the uses of the freehds, apptmt of A. & B., exs.; Death of X., &c., & probate, Vol. I.,* p. 374; *That X. died,* " seised of the freehd hds hby mtged for an este of inhance in fee simple, & seised of or entled to the copyhd or customary hds hby mtged for an este of inhance to him & his hrs, accdg to the customs of the sevl manors of wch the same are resply holden; [*If A. & B. are not exors, make the exors*

Powers of mortgaging under S. L. Acts.

(*a*) Powers of mortgaging settled estates for some purposes are given to tenants for life under settlements, past or future, by the S. L. A., 1882 and 1890; see the next Precedent and the note thereto. Any mortgaging powers vested in the trustees, whether for purposes other than those provided for by the Acts, or for the same purpose, are kept alive by the former Act, ss. 56 and 57; if for the same purpose, the consent of the tenant for life would, under s. 56 (2), be necessary to their exercise (except where the settlement is by way of trust for sale, S. L. A., 1884, s. 6), even if it were not so by the express power.

As to keeping alive leasing powers.

(*b*) The powers of sale and leasing in the will, as well as those vested in the tenant for life by the S. L. A., 1882 to 1890 (see s. 20 (2) ii. of the Act of 1882), would be subject to the mortgage, unless expressly kept alive so as to override it; this is done in this Precedent as regards the leasing powers in the will, and it might also be done as regards those in the Act if the power to take a premium were excluded. The C. A., 1881, s. 18, giving leasing powers to mortgagors in possession, is apparently not applicable.

pties, & concur in the assnmt of the leasehds, & if X. died after 1897 *in the convce of the freehds ;*] AND WHAS the sd A. & B. have determined, at the reqt of the sd C., & in exercise of the sd recited power, to borrow the sum of £——, & the sd D., E., & F., have agrd to advce the same out of moys belongg to them on a jt acct upon havg the repaymt thof, with intt at the rate hinafter mentd, secd in mner hinafter appearg: NOW THIS INDRE WITNETH, that in conson of the sum of £——, upon the exon of these psnts, pd by the sd D., E., & F., to the sd A. & B., at the reqt of the sd C., *rect, covt by C. to pay ppal & intt after default, as in Prec. II.*, p. 70; AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, & for the conson afsd, the sd A. & B., **as trees**, at the reqt of the sd C., & in exercise of the sd power contd in the sd will of the sd X., & of every other power in this behalf enablg them, do hby appt (*c*), & the sd C., **as benefl owner** (*d*), doth hby confirm, *freehd pcels, see Vol. I.*, p. 385 *et seq.;* TO THE USE of the sd D., E., & F., their hrs & assns, subjt to the provo for redmon hinafter contd: AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, & for the conson afsd, the sd A. & B. **as trees** (*d*), at the reqt of the sd C., & in exercise of the sd power contd in the sd will, & of every other power, &c., do hby demise (*e*), & the sd C. **as benefl owner** (*d*), doth hby confirm unto the sd D., E., & F., *leasehd pcels, by referce to leases, Vol. I.*, p. 389; *habendum*, p. 14; *Provo for redmon*, p. 17, *form* IV., "if the sd A. & B., or other the trees or tree for the time being of the sd recited will, or the sd C., his hrs, exs, or ads, or any other pson or psons intted in the equity of redmon of the sd premes hby mtged, shl, &c., *the reconve to be,* "at the cost of the pson or psons requirg the same" *the freehds to be reconveyed,* "to the uses, upon the trusts, & subjt to the powers & provons to, upon, & subjt to wch the same stood limd by virtue of the sd recited will immedly bfe the exon of these psnts, or such of them as shl be subsistg," *the leasehds to be surrendered,* "to the sd A. & B., their exs, ads,

PREC. XIII.

Agreement for loan.

Witnesseth.

Further witnesseth.

Appointment of freeholds.

To use of mortgagees.

Further witnesseth.

Demise of leaseholds.

Proviso for redemption.

(*c*) The trustees having no estate in the freeholds, the mortgage is made by appointment; if the legal estate were in the trustees, the mortgage would be in the usual form of a conveyance by grant.

(*d*) See note (*a*), p. 62.

(*e*) As to mortgages of leaseholds by demise, see above, p. 75, note.

PREC. XIII.

or assns, or other the trees or tree for the time being of the sd recited will upon the trusts, & subjt to the powers & provons to, upon, & subjt to wch the same were held by virtue of the sd recited will immedly bfe the exon of these psnts, or such of them as shl be subsistg;" *Declon of trust of nominal revon of each lease, &c.*, p. 30; AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, & for the conson afsd, the sd A. & B., **as trees** (*a*), at the reqt of the sd C., & in exercise of the power contd in the sd will, & of every other power, &c., do hby resply covt, & the sd C. doth hby also covt with the sd D., E., & F., their hrs & assns, that they, the sd A. & B., or the survor of them, or his hrs, & all other necy pties, if any, *rest of covt to surrender, subjt to redmon, as in Prec. III.*, p. 72; *Declon of trust of copyhds for mtgees till surrender*, p. 30; [*Declon that moy belongs to mtgees on a jt acct*, p. 37:] PROVD ALWAYS, & it is hby agrd, that as betn the sd C., his hrs, exs, & ads, & the sd mtged hds, the sd hds shl be the primary secy for the moys hby secd, but this provo shl not affect the sd D., E., & F., their exs, ads, & assns, or their rt to resort to, & enforce their sevl secs & remedies for recoverg the moys hby secd agst the sd hds or the sd C., his hrs, exs, & ads psonally, in such order or mner as they may think fit; *Covt by C. to insure & repair durg his life, if appropriate*, p. 42, *or* p. 45: PROVD ALWAYS, & it is hby agrd, that it shl be lful for the sd C., or other the pson or psons who shl from time to time be the donee or donees of the powers of leasg contd in the sd recited will at any time or times hrafter bfe the sd D., E., & F., their hrs, exs, ads, or assns, shl have eir sold or ented into posson of the whole of the sd premes hby mtged, or have foreclosed the equity of redmon thof, to exercise over the whole, or any pt thof wch shl not have been sold, or entd into posson of, all or any of the sd leasg powers contd in the sd will in the

Further witnesseth.

Covenant to surrender copyholds.

Proviso as to primary liability of mortgaged premises.

Power of leasing (*b*).

(*a*) See note (*a*), p. 62.

Leasing powers kept alive.

(*b*) The leasing powers might be kept alive in equity as against the mortgagees by a mere declaration to that effect. The object of this formal power is to enable the donee to give the legal estate to the lessee by means of an appointment operating under the Statute of Uses; but as copyholds and leaseholds are not within the Statute of Uses, a lease of them granted by the donee of the power without the concurrence of the mortgagees, would take effect in equity only, as against them, and a covenant by the mortgagees to concur in such leases is therefore added.

PREC. XIII.

same mner as if these psnts had not been exted, & so that every such lease shl be bindg on the sd D., E., & F., their hrs, exs, ads, & assns, witht their consent to or concurrce thrin: *Covt to deliver the counterpts of the leases to the mtgees*, p. 47: AND the sd D., E., & F. do hby covt with the sd A. & B., their hrs, exs, ads, & assns, that they, the sd D., E., & F., their hrs, exs, ads, or assns, will, at the reqt & cost of the donee or donees for the time being of the sd sevl powers of leasg contd in the sd will, concur in any & every such lease of the sd copyhd or leasehd premes hby mtged, or any pt or pts thof, for the ppose of confirmg the demised premes to the lessee or lessees (*c*); *Trees not to be psonally liable*, p. 38, *form* XXII.; *Covt not to register*, p. 50, *form* XXXVI.; *Power to sell leasehds by underlease*, p. 29, *form* XIV.; *Mtgee's indemnity clause*, p. 59; *Clause incorporatg statutory covts for title as to copyhds by A.*, p. 66, *form* III. (*d*). IN WITS, &c.

Covenant by mortgagees to concur in leases.

XIV.

PREC. XIV.

MORTGAGE *of* SETTLED FREEHOLDS *by the* TENANT FOR LIFE *for raising money required for* ENFRANCHISEMENT *of copyholds, or for* EQUALITY OF EXCHANGE *or* PARTITION, *or for discharging an* INCUMBRANCE

(*c*) The power of sale in the C. A., 1881, s. 19, is relied on. Trustees with power to mortgage may give a power of sale to the mortgagee without express authority, *Re Chawner*, L. R. 8 Eq. 569; *Cruikshank* v. *Duffin*, L. R. 13 Eq. 555; and the statutory power would apply (if the trustees are authorised to give a power), unless the trustees expressly exclude it, which they are not bound to do; see s. 66 of the Act. If an express power of sale were inserted (see form, p. 20), it would be made exerciseable, "witht any further consent by any pson or psons intted in the premes, or the trees or tree for the time being of the sd will"; in the clause for the protection of purchasers say, "the remedy of the psons or pson inttd in the premes:" and the surplus purchase-monies to be paid to "the trees or tree for the time being of the sd will."

As to power of sale in mortgage by trustees.

(*d*) As to the copyholds it appears better to incorporate the statutory covenants, as there may be some doubt as to effect of a covenant by one person "as beneficial owner" that another shall convey.

PREC. XIV.

on SETTLED LAND, *under the powers of the* SETTLED LAND ACTS (*a*). *The* TENANT FOR LIFE *covenants for* PAYMENT.

Recitals.

PARTIES, A., *tenant for life*, 1; B. & C., *trees*, 2; D., *mtgee*, 3. *Recite the settlmt & events by virtue of wch A. is tenant for life in posson, & B. & C. trees with power of sale of the* "hds hby mtged," *or*, "were by the sd settlemt appted trees of the sd indre of settlemt for the pposes of the Settled Land Acts, 1882 to 1890"; AND WHAS the sum of £—— is required for the enfranchisemt of certn copyhd hds now vested in the sd B. & C. upon the trusts of the sd settlemt, *or as the case may be;* AND WHAS the sd A., by virtue of the powers vested in him

Purpose for which loan required.

Powers of mortgaging by tenants for life under the S. L. Acts.

(*a*) A tenant for life, as defined by s. 2 of the S. L. A., 1882, or other limited owner as defined by s. 58, under any settlement past or future, is empowered to raise money required for enfranchisement (*i.e.*, of copyholds subject to the settlement, see s. 21 (v.)), or for equality of exchange or partition (see s. 3 (iii., iv.)), of the settled land (S. L. A., 1882, s. 18), or for the purpose of discharging an incumbrance, not being a terminable charge, on the settled land or part thereof, and for payment of the amount properly required for the costs of the transaction (S. L. A., 1890, s. 11, sub-s. (1); by mortgage thereof or any part thereof, either in fee simple, or for other the estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise; and by s. 20 of the Act of 1882 is empowered to convey the land to the uses and in the manner requisite for giving effect to the mortgage, and as to copyholds, see sub-s. 3; see also ss. 40, 54, protecting mortgagees dealing with the tenant for life in good faith, and s. 55. By s. 18 the money raised is to be capital money (as to which, see s. 2 (9)), and by s. 22 is to be paid either to the trustees of the settlement (as to whom see s. 2 (8), and s. 38), whose receipt is a good discharge (s. 40), or into court, at the option of the tenant for life; but by s. 39 it is not to be paid to fewer than two trustees unless this is authorised by the settlement. See also s. 45, and the S. L. A., 1884, s. 5, sub-s. (3), as to giving notice to the trustees of the intention to make the mortgage (as to who are trustees of the settlement for the purposes of the Acts, see the Act of 1882, s. 2 (8), and the Act of 1890, s. 16, and the remarks on the latter section in Vol. I., p. 473). Section 5, sub-s. (1), of the Act of 1884, providing that the notice may be notice of a general intention, does not apply to mortgages, as to which specific notice must therefore be given within the meaning of *Re Ray*, 25 Ch. D. 464. See further on the Acts, Vol. I., pp. 467 *et seq.*, and *infra*, SETTLEMENTS.

As to the power of tenants for life to borrow money for redemption of extraordinary tithes, and to charge the inheritance with the repayment, see Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), s. 6.

The trustees are made parties to the mortgage in this case to acknowledge the receipt of the money; otherwise their concurrence would not be necessary. The recitals should show that the mortgagor is tenant for life or limited owner, and that the trustees are "trustees of the settlement," within the meaning of the Act.

under the Settled Land Acts, 1882 to 1890, has determined to raise the sd sum for the ppose afsd, & the sd D. has agrd to advce the same upon havg the repaymt thof, togr with intt thron at the rate hinafter mentd secd in mner hinafter appearg; [*Recital as to munimts, Vol. I.*, p. 382;] NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, & in conson of the sum of £—— now pd to the sd B. & C. as such trees as afsd, at the reqt of the sd A., by the sd D. (the paymt & rect whof in mner afsd is hby acknowed by the sd A. & by the sd B. & C.), *covt by A. for paymt of ppal, & intt after default*, pp. 9 & 10 (*b*); AND THIS INDRE ALSO WITNETH that in further psuance of the sd recited agrmt, & for the conson afsd, the sd A., **as benefl owner**, by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & of every other power in this behalf him enablg, doth hby grt & convey unto the sd D., *Pcels, see Vol. I.*, p. 385 *et seq.*; *habendum*, p. 14; *Provo for redmon*, p. 18, *form* XI.; [*Provon as to primary liability of mtged premes as in last Prec.*, p. 92]; *Covt by A. to insure & repair, if appropriate*, p. 42, *form* XXIX., *or* p. 45, *form* XXX. (*c*); *Covt agst registron*, p. 50, *form* XXXVI.; *Mtgee's indemnity clause*, p. 59; [*Acknmt & undertakg by A. as to munimts*, p. 60]; *Provo that trees are not to be psonally liable*, p. 38. IN WITS, &c.

Agreement for loan.

Witnesseth.

Covenant for payment.

Also witnesseth.

Grant.

[*Schdle.*]

(*b*) Sometimes the only covenant by the tenant for life is for payment of interest during his life, see p. 10, form IV.

(c) The statutory power of sale is left to operate. The tenant for life though in the position of a fiduciary owner (see the S. L. A., 1882, s. 53), may doubtless give a power of sale to the mortgagee. See p. 93, note.

XV

PREC. XV.

MORTGAGE *of a* POLICY *of* LIFE ASSURANCE *effected by the* MORTGAGOR *on his own life.* VARIATIONS *where* the POLICY *is effected in the* NAME *of the* MORTGAGEE, *and for* TRUSTEES *or others lending on a* JOINT ACCOUNT (*a*).

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2. *Recite poly on life of A.*, p. 5, *agrmt for loan*, p. 1; *First testatum as in Prec. I.*, p. 68, *covt by A. for paymt*, p. 9; *& intt after default*, p. 10:

Also witnesseth. Assignment. Policy.

AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd, the sd A. **as benefl owner,** doth hby assn unto the sd B. ALL THAT the sd hinbfe recited poly of assurce on the life of the sd A. [*or* ALL THAT poly of assurce on the life of the sd A. effected in the —— Assurce Socy, dated, &c., nod., &c., & under the annl prem of ——] & all moys assured by or to become payable under the sd poly, & the full benefit thof (*b*). TO HOLD the same UNTO the sd B., subjt to the provo for redmon hinafter

Habendum. To mortgagees.

Variations where policy effected in name of mortgagee.

(*a*) The variations where the policy is effected in the name of the mortgagee will be :—the agreement for the loan will be recited first and the policy next, see p. 5, form IX.; the assignment of the policy will be omitted, and the proviso for redemption will be for assignment to the mortgagor of "the sd poly of assurce hinbfe recited to have been effected:" and the policy may afterwards be described as "the sd poly hby mtged."

Variations for mortgage to trustees.

The variations for a mortgage to trustees or others on a joint account will be similar to those indicated in Prec. II.; otherwise they will be merely the substitution of the plural.

Mortgage to insurance company.

Where an insurance company takes a mortgage of its own policies they should by way of precaution be assigned to trustees for the company, although incorporated, to avoid questions (analogous to those arising where a creditor appoints his debtor to be his executor), as to extinguishment and suspension, notwithstanding that there would of course be none in equity.

Policies of Assurance Act, 1867.

(*b*) The insertion of a power of attorney to the mortgagee to use the name of the mortgagor in suing, &c., is rendered unnecessary by the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144); but notice of the mortgage must be given to the office according to the Act unless the policy is effected in the name of the mortgagee. The giving of the notice does not, however, gain priority for subsequent incumbrances, when the holder has notice of a prior charge of which the statutory notice has not been given; *Newman* v. *Newman*, 28 Ch. D. 674. Enquiry should be made before completion from the office whether they have notice of any charge on the policy.

As to the lien of a person, not being sole beneficial owner, for premiums paid by him on a policy, *ante*, p. 41, note (*e*).

contd; *Provo for redmon,* p. 17, *form* III.: [*Rect clause,* p. 39, *& trusts of moys reced under poly,* p. 40, *unless these clauses are omitted in reliance on the statute, see* p. 39, *note*]; *Covt by A. to keep up poly with subsidiary clauses,* p. 40, *form* XXVII., *or* p. 41; *form* XXVIII. (*c*); *Mtgee's indemnity clause* p. 59. IN WITS, &c. (*d*).

(*c*) The following special covenants are sometimes inserted in addition to those above referred to:—

"AND FURTHER, that in case the sd, *mtgee,* &c., shl at any time durg the subsistce of this secy have reasble ground for believg that the sd, *mtgor,* is bound to go beyond the limits permitted by any poly for the time being subjt to this secy or to subjt his life to any extraordinary risk not covered by any such poly, then it shl be lful for the sd, *mtgee,* &c., witht any further consent on the pt of the sd, *mtgor,* to pay any extra prems on such poly for any increased risk (wch with intt at the rate afsd shl be a chge on the premes afsd) or to surrender by way of exchange or orwise for valuable conson any poly or pols for the time being subjt to the sd secy & if thought pper to accept in exchange or orwise effect any other poly or pols on the life of the sd, *mtgor,* in such office or offices & for such sum or sums & at such prems eir uniform or increasg or decreasg contingently on any event or orwise & genlly to deal with any poly or pols for the time being subjt to the sd secy in the same mner as if the sd, *mtgee,* &c., had been absolutely entled to such poly: AND FURTHER, that the sd, *mtgee,* &c., may effect any new poly or pols as afsd upon terms allowg the sd, *mtgor,* to travel by land or sea & with or witht restron as to mode or limits & to reside eir durg his life or for any other period in any pt of the world & upon any other terms providg for any other contingency or extraordinary risk for wch it may be deemed expedient to provide."

Mortgagee to have power to pay extra premiums for extraordinary risk.

Or to surrender or exchange policy.

Or to effect new policy upon terms.

(*d*) As to the importance of stamping the assignment at once, see the Stamp Act, 1891, s. 118, and 33 Sol. J. 3.

XVI.

PREC. XVI.

MORTGAGE *of a* LIFE INTEREST *in* REAL ESTATE *and* POLICY *of* ASSURANCE *on the life of the* MORTGAGOR *effected in his own name* (*a*). VARIATIONS *for several* POLICIES.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2. *Recitals showg that A. is seised for life witht impeachmt of waste of* "the hds hby mtged"; *& is entled to a policy or policies on his life*, p. 5; *Agrmt for loan*, p. 1; *First testatum as in Prec. I.*, p. 68; *Covt by A. for paymt of ppal.* p. 9; *& intt after default*, p. 10.

Further witnesseth. Demise. Habendum. To mortgagee.

AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd the sd A. **as benefl owner** doth hby grant (*b*) unto the sd B, *pcels, Vol. I.*, p. 385 *et seq.*; TO HOLD the same premes UNTO the sd B., from the date of these psnts during the life of & for all other the este & intt (if any) of the sd A. in the sd premes [witht impeachmt

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(*a*) For variations where the policy is effected in the name of the mortgagee, see the last Precedent.

Form of mortgage of life estate in realty.

(*b*) The old practice in the case of a life estate in realty, was to make the mortgage by demise for ninety-nine years if the mortgagor should so long live, instead of by conveyance of the whole life estate, in order not to affect the powers of leasing and consenting to sales, &c., annexed by the settlement to the life estate; but according to the authorities (see *Re Bedingfeld & Herring*, (1893) 2 Ch. 332), the form of the mortgage in this respect is immaterial, as the powers remain alive notwithstanding the assignment, though not exerciseable to the prejudice of the incumbrancer without his consent; and the position is much the same as regards the powers of the S. L. A., 1882 (see s. 50). The mortgage in the text is therefore made by assignment. The clause at the end of the Precedent enabling the powers (express or statutory) to be exercised without the consent of the mortgagee should generally be inserted.

As to demise by bargain and sale.

In a mortgage of the life estate by demise in the old form, the mortgagor was made to "bargain, sell & demise," habendum "for the term of ninety-nine yrs if he shd so long live"; in order that the deed might operate as a bargain and sale for the term, so as to create an estate in the mortgagee without entry, instead of a mere *interesse termini*, as would be the case under a common demise; see Elph. Introd. 176. The proviso for redemption would be to "surrender & reconvey the sd hds policy and premes."

Registered land.

Where the land is registered in the name of the tenant for life, a restriction in the name of the mortgagee should be entered; if the land is registered in the names of the trustees of the settlement, notice of the mortgage should be served on them and a caution entered. Possibly in this latter case some form of inhibition may be allowed. If it is intended that the statutory power of sale should remain exerciseable by the tenant for life without the concurrence of the mortgagee these precautions may be omitted.

Also witnesseth.

of waste] subjt to the provo for redmon hinafter contd; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd, *assnmt by A. of poly or pols subjt to redmon as in last Prec.*, p. 96, *if sevl pols describg them as* "the sd sevl pols on the life of him the sd A.," *or describg them in full, see last Prec.*, "& all moys assured by or to become payable under the same resply;" *Provo for redmon*, p. 16, *saying* "reconvey the sd premes hby conveyed unto the sd A.;" [*Rect clause & trusts of moys reced under the poly or pols*, pp. 39, 40, *unless these clauses are omitted in reliance on the Act, see* p. 39, *note*]; *Covt by A. to keep up poly or pols, &c.*, p. 40, *form* XXVII., *or* p. 41, *form* XXVIII., *Covt by A. to insure & repair, if appropriate*, p. 42, *form* XXIX., *or* p. 45, *form* XXX. (*c*); *Covt agst registron*, p. 50, *form* XXXVI. (*d*); *Mtgee's indemnity clause*, p. 59; PROVD ALWAYS, & it is hby agrd that nothing hrin contd shl affect the power of the sd A. to exercise or consent to the exercise of any of the powers of leasing, sale & exchange, or any other powers contd

Proviso to mortgagor's powers under settlement, &c. (*e*).

(*c*) The statutory power of sale is relied on. In the simple case where the life estate is followed by a remainder in fee, and the mortgage is affected by a grant of the entire life estate, it will be convenient to authorise the mortgagee to concur in the sale of the fee; where this is intended add, "& it is hby agrd & decld that in the event of a sale of the sd hds hby mtged or any pt thof under the power of sale vested in the sd, *mtgee*, &c., by virtue of these psnts, & the statute in that behalf it shl be lful for the sd, *mtgee*, &c., to concur with the sd *revoner*, his hrs or assns, in sellg the fee simple & inhance of the sd hds or any pt thof, & to agree with him or them for the apportionmt of the pchase-moy in respt of the life este hby mtged & the revon in fee expectant thron."

Power for mortgagee to concur in sale of fee simple.

(*d*) See notes, pp. 1 *et seq.* and p. 50.

As to the apportionment of the purchase-money in such a case, see *In re Cooper*, 4 Ch. D. 802.

(*e*) As to the power of the mortgagor to appoint new trustees of the settlement being exercisable without the mortgagee's consent, see *Hardaker* v. *Moorhouse*, 26 Ch. D. 417; commented on *Re Bedingfeld*, [1893] 2 Ch. at p. 337.

As to leasing powers where mortgagor tenant for life.

It would appear that on a mortgage of a life estate the mortgagor while remaining in possession may exercise the powers of leasing at rack-rent conferred on mortgagors by s. 18 of the C. A., 1881, so far as, having regard to sub-s. 15, they correspond with his leasing powers as tenant for life, whether express or arising under the Settled Estates Act, 1877, without the consent of the mortgagee; this, however, is not very material, since his powers of leasing

PREC. XVI. in the hinbfe recited indre of settlemt, *or*, "will," save & except, &c., *here specify any power to be excepted*, or to exercise the powers vested in him the sd A. under the Settled Land Acts, 1882 to 1890, or any Act amendg or extendg the same, all wch powers (save as afsd) shl be exerciseable witht any further consent or concurrce by or on the pt of the sd B., his exs, ads, or assns; & that this secy shl affect & attach upon the life este or intt of the sd A. in all ppty wch by means of any sale, exchange or transposon of investmt under any of such powers may from time to time be substituted for the sd hds or any pt thof, & on the rents reserved on leases. IN WITS, &c. (*a*).

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under the S. L. A., 1882, are expressly made exercisable by him while in possession, as to rack-rent leases, without such consent, by s. 50 (3) of the Act. But it would seem that in such a case a power to lease cannot be given to the mortgagee, since the leasing powers of a tenant for life, whether express or arising under the Settled Estates Act, 1877, are personal to him and fiduciary, and therefore not capable of being deputed or passing to an assignee of his estate; and the powers of a tenant for life under the S. L. A., 1882, are by s. 50, expressly made not assignable either expressly or by operation of law; and it seems doubtful whether s. 18 of the C. A. 1881, enables a mortgagee in possession to exercise a leasing power conferred on the mortgagor as tenant for life by the settlement or the Settled Estates Act, 1877; but he can, of course, under that enactment grant a lease determinable on the death of the tenant for life; see Hood and Challis, Conv., &c., Acts, 72, 280.

It has been suggested that, in order to obviate difficulties which may occur if the tenant for life neglects or declines to make proper leases, the tenant for life should covenant to make leases at the direction of the mortgagee, or should appoint the mortgagee his attorney for the purpose of making the leases. But it must be observed that as a tenant for life is in a fiduciary position, he can only covenant to grant such leases as he can properly grant, and he cannot delegate his power of leasing to an attorney.

The covenant may take the form following:—

Covenant by mortgagor to grant leases.

"That if the sd B. his exs, ads or assns shl enter into posson of the hds hby mtgd, the sd A. will at any time or times thrafter at the reqt of the sd B. his exs, ads or assns exte & grt such leases or tenances of the sd hds or any pt thof as the sd B. his exs, ads or assns shl require, & the sd A. shl for the time being, be, under any Statute or orwise empowered or authorised to exte or grt, the costs of such exon or grt of tenancy to be borne by the said A. until foreclosure or sale of the said premes & aftwds by the sd B. his exs, ads or assns."

(*a*) Notice to be given and enquiries to be made from the insurance office or offices, see p. 96, note.

XVII.

MORTGAGE *of a* Life Interest *in* Personalty *and of* Policies *on the* Life *of the* Mortgagor. Variations *for a* Mortgage *to* Trustees *of the* Insurance Company *issuing the* Policy (*b*).

PREC. XVII.

Recitals.
Settlement.
Investment of trust funds.
Title to policies.
Further witnesseth.
Assignment.
Life interest.
Policies.
Habendum.

Parties, A., *mtgor*, 1; B., *mtgee*, 2: Whas under or by virtue of an indre dated, &c., & made, &c., being a settlmt exted in contemplon of the marre shortly aftwds solemnized betn the sd A. & M., & of certn transfers & paymts made previously or subseqtly to the sd indre of settlemt, certn ppty thrin mentd became vested in the trees of the sd settlemt upon trusts for investg & transposg the investmt thof resply, & subjt thto for paymt of the income throf, & of the investmts throf resply to the sd A. & his assns durg his life; And whas the ppty now subjt to the trusts of the sd settlemt consists of the ppty, the parlars whof are specified in the first schdle hto, wch are now vested in X. & Y., the psnt trees of the sd settlemt; And whas the sd A. is absolutely entled to the sevl pols of assurce on his life mentd in the second schdle hto; *Agrmt for loan*, p. 1; *First testatum as in Prec. I.*, p. 69, *covt by A. for paymt of ppal*, p. 9; *& intt after default*, p. 10; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd the sd A. **as benefl owner**, doth hby assn unto the sd B.: First, All the income wch shl arise durg the life of the sd A. from the ppty specified in the first schdle hto, & from all other (if any) the ppty subjt to the trusts of the sd settlemt & every pt thof, & from the investmts from time to time representg the same or any pt thof; & secondly, All those pols of assurce, the parlars whof are specified in the sd second schdle hto, & all moys assured by or to become payable under such sevl pols & the full benefit throf resply; To hold all the same premes unto the sd

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(*b*) Where the mortgage is made to the trustees of the insurance company which issued the policies, the variations will be the following. The company will be a party of the second part the trustees of the third part. The covenants for payment will be made with the office, the assignment will be made to the trustees, the proviso for redemption will be that on payment to the company the trustees will reconvey. The covenant to keep up the policies will be in the form given on p. 102.

PREC. XVII.

To mortgagee.

Declaration that income shall be paid to mortgagee if required (*a*).

B., subjt to the provo for redmon hinafter contd; *Provo for redmon,* p. 17: AND IT IS HBY agrd that the trees or tree for the time being of the sd indre of settlemt shl from time to time durg the continuce of this secy if reqted so to do by the sd B., his exs, ads, or assns, pay the sd income hby mtged or any pt thof to the sd B., his exs, ads, or assns, & in the meantime shl pay the whole or such pt of the sd income as shl not be payable to the sd B., his exs, ads, or assns, by virtue of any such reqt as afsd, to the sd A. or his assns: [*Mtgee's rects to be dischges,* p. 39, "for any moys pd to him or them in psuance of any such reqt as afsd or under or by virtue of the sd pols of assurce, or any of them; AND IT IS HBY agrd that if the sd B., his exs, ads, or assns, shl rece the sd divds, intt, & income or any pt thof, or any moys in respt of the sd pols or any of them, he or they shl apply the same in the first place, *continue trusts of moys reced,* p. 40, *unless these two clauses are omitted in reliance on the statute, see* p. 39, *note*]: *Covt by A. to keep up life pols, &c.,* p. 40, *form* XXVII., *or* p. 41, *form* XXVIII., (*b*), *or if mtge is to trees of the Co issug the poly*; [The sd *mtgor* hby covts with the Co duly to pay every premium or sum wch from time to time durg the continuce of this secy may be or become payable for keepg on foot the sd poly, & to make each such paymt within three days after the first day on wch it becomes payable: AND IT IS HBY agrd & decld that every such premium or sum wch shl not be so pd within three days as afsd, shl carry intt to be computed from the first day on wch it becomes payable, & to be payable yrly at the rate of 6 p.c. p.a. & shl, with such intt thron as afsd, be a chge upon the premes hby assnd: PROVD ALWAYS & it is hby further agrd & decld that the sd Co shl not be obliged to rece the premiums for the time payable on the sd poly, while any intt on the sd ppal sum shl be in arrear, & that the sd poly shl be construed as if such intt had been originally reserved by & made payable on the yrly days afsd by the sd poly as pt of & by way of increase of the amt of premium in respt throf: AND IT IS HBY agrd that in case of any default by the mtgor in any respt whatever the sd Co shl have all statutory & other powers

Covenant to keep up policies on mortgage to insurance office.

(*a*) This declaration may be omitted, being implied by law.

(*b*) The power of sale is omitted in reliance on the statute, if inserted it would be of "the sd life intt, pols & premes hby mtged, or any of them or any pt or pts thof."

of sale & orwise, & also power to cancel the sd poly by any writg under the hands of three of the dirors of the sd Co to be endorsed on the sd poly, & that any such cancellg shl operate as if it were a sale made under the power of sale at a price eql to the office or surrender value of the sd poly on the day prevs to that on wch it shl be cancelled & the amt of such office or surrender value shl be applied accdly]: *Mtgee's indemnity clause*, p. 59.

IN WITS, &c. (*c*).

[*Two Schdles* (*d*).]

XVIII.

PREC. XVIII.

MORTGAGE *by* TENANT IN TAIL *in remainder creating a* BASE FEE *for securing a sum of* MONEY *payable in a certain* CONTINGENCY *to the trustees of an Insurance Company.* COVENANT *by Mortgagor when in* POSSESSION *to execute* FULL *disentailing assurance* (*e*).

Parties.

PARTIES, A., *mtgor*, 1; B., C., & D., *trees of Insce Co.* hinafter called the mtgees, wch expression shd include their exs, ads, & assns, 2. *Recite will of Y. under wch A. is tenant in tail in remr after the death of X. & contingently on the failure of the latter's issue male:* AND WHAS the sd X. is of the age of —— yrs & has never had any issue: AND WHAS the sd A. has agrd

Recitals. Will.

Agreement.

(*c*) Inquiries must be made from and notice must be given to the trustees of the settlement and to the insurance offices. See p. 96, note. As to inquiries from trustees with regard to incumbrances, and the duty and responsibility of trustees in respect of answering such inquiries, see *Low* v. *Bouverie*, [1891] 3 Ch. 82, where the subject was elaborately considered by the Court of Appeal, and as to the duty of trustees to inform the *cestui que* trusts how the trust property is invested, see *Re Dartnall*, [1895] 1 Ch. 474. As to notice where there is a subsettlement, see *Stephens* v. *Green*, [1895] 2 Ch. 148. It may be desirable to place a distringas on the funds; see as to distringas, *infra*, p. 115, note. It may be mentioned that the usual power of a tenant for life to consent to an advancement in favour of children entitled in remainder could not be exercised to the prejudice of his incumbrancer; Vaizey on Settlements, 1051. As to stamps, see p. 97, note.

(*d*) The schedule of policies may be tabulated; see Vol. I., p. 393, note.

(*e*) To be enrolled within six months under the Fines and Recoveries Act, 3 & 4 Will. IV. c. 74; see as to the creation and enlargement of base fees, ss. 15, 34, 38, 39, 40, 41. As to registered land, see Vol. I., p. 272, note.

As to base fees.

PREC. XVIII.

with the mtgees in conson of £—— to be pd to him out of moys belongg to them on a jt acct to secure in mner hinafter appearg if the sd X. shl die witht leavg issue male at his death & in the lifetime of the sd A. the paymt to them at the expiron of one calr month from the death of the sd X. as afsd of the sum of £—— with intt thron at the rate of —— p.c. p.a., from the death as afsd of the sd X. until paymt of the ppal: NOW THIS

Witnesseth.

INDRE WITNETH that in psuance, *conson & receipt*, p. 9, the sd A. hby covts with the mtgees to pay to them at

Covenant for payment.

the expiron of one calr month from the death of the sd X. if he shl die witht leavg issue male at his death & in the lifetime of the said A. the sum of £—— with intt thron at the rate of £—— p.c. p.a., such intt to commce from the day of the death as afsd of the sd X.: AND ALSO to pay to the mtgees if the sd moy shl not be so pd so long as any ppal moy remains due under these psnts after the expiron of one calr month from the day of the death as afsd of the sd X., intt thron at the rate afsd by eql half-yrly paymts, the first of such paymts to be made at the expiron of seven calr months from the day of the death as afsd of the sd X.;

Also witnesseth.

AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, & for the conson afsd, the sd A., **as benefl owner**, hby conveys unto the mtgees: First, ALL the

Conveyance.

freehd, leasehd, & copyhd manors, messes, lands, & hds, the short parlars whof are contd in the —— schdle hto, & all other, if any, the manors, messes, lands, & hds, now subjt to the limons for the time being subsistg under the will of the sd Y.: Secondly, ALL the moys & investmts now liable to be invested in the pchase of hds to be conveyed & settled to the uses or upon the trusts for the time being subsistg under the will of the sd Y., & all the hds to be pchased thrwith psuant to the trusts of the sd will: AND thirdly, ALL other (if any) the messes, lands, hds, moys, or investmts to wch the sd A. is or may become entled for any este or intt whatsr under the sd will: TO HOLD the

Habendum.

same unto & to the use of the mtgees, their hrs, exs, ads, & assns, subjt to the este for life of the sd X., & the estes of his issue male under the sd will, & also subjt to the chges prior to & to all powers overreaching the este in tail male of the sd

Discharged from

A., under the sd will but dischged so far as may be from the sd este in tail male of the sd A., & all other estes in estate tail.

Proviso for redemption.

Further witnesseth.

Covenant to enlarge base fee.

Power to mortgagees to do o

tail mail or in tail of the sd A., & all other estes and intts to take effect after the determon or in defeazance thof, nevs subject to the provo for redmon hinafter contd: PROVD ALWAYS, & it is hby agrd & decld, that on paymt at the expiron of one calr month from the day of the death of the sd X. witht leavg issue male, & in the lifetime of the sd A., to the mtgees of the sum of £—— with intt thron calculated from the day of such death at the rate of —— p.c. p.a., the premes hinbfe conveyed shl at the reqt & cost of the sd A., or the psons derivg title under him, be duly reconveyed to him or them: *Covt agst registron*, p. 50, *form* XXXVI., saying, "shl after the death of the sd X., be regrd, etc.": AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, & for the conson afsd, the sd A. hby covts with the mtgees, that within seven days after the death of the sd X. witht leavg issue male, & in the lifetime of the sd A., he the sd A. will at his own cost & to the satisfon of the mtgees, duly exte & cause to be duly enrolled & orwise perfected a pper assurce or pper assurces, by way of disentail of all the freehd & copyhd manors, messes, lands, moys, & investmts hinbfe conveyed, & so as thby to confirm these psnts & vest the same premes in the mtgees, their hrs, exs, ads, & assns, for an este in fee simple or other the whole intt thrin of the sd A., subjt to the hinbfe mentd prior chges & over-reaching powers, but dischged from all estes in tail male or in tail of the sd A., & all estes & intts to take effect after the determon, or in defeazance of any such este in tail male or in tail, & so as to be subjt to the rt of redmon for the time being subsistg under these psnts (*a*): AND FURTHER, that in default of such assurce or assurces havg been duly exted & perfected within such seven days as afsd, it shl be lful for the mtgees, or any of them, by virtue of the power of atty hinafter contd in the name & on behalf of the sd A., to exte & procure to be enrolled & perfected such pper assurce or assurces as afsd, & that the sd A. will pay to the mtgees all costs & expses incurred by them of or incidental to the preparon & complon

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(*a*) Sometimes a form of the deed to be executed under this covenant or the power of attorney, is given in a schedule, to save time, and to avoid any question as to its being in proper form. As to making the power irrevocable, see the C. A., 1882, s. 8.

PREC. XVIII.

of such assurce or assurces, & the enrolmt & perfectg thof, & that the amt of all such costs & expses, with intt thron at the rate of £—— p.c. p.a., shl be a chge on the premes hby & thby resply conveyed: AND THIS INDRE ALSO WITNETH, that for the conson afsd, the sd A. doth hby irrevocably nominate & appt the mtgees & each & every of them, or other the psons or pson entled to the moys for the time being due on these psnts to be the attys & atty of him the said A., for him & in his name & on his behalf, & as his act & deed, to sign, seal, & deliver, & orwise perfect any deed or deeds, surrender or surrenders, or other assurces by way of disentail, for the ppose of conveying all the freehd & copyhd manors, messes, lands, moys, & investmts hinbfe conveyed, & vestg the same in the mtgees, or other the psons or pson afsd for an este in fee simple, or other the whole intt thrin, subjt to the hinbfe mentd prior chges & overreachg powers, but dischged from every este tail of the sd A., & all estes & intts to take effect after the determon or in defeazance of any such este in tail male or in tail, & so as to be subjt to the rt of redmon for the time being subsistg under these psnts. IN WITS, &c.

Also witnesseth.

Power of attorney.

[*Schdle of Pcels.*]

XIX.

PREC. XIX.

CONTRIBUTORY MORTGAGE *of* FREEHOLDS *where the money is advanced in* DISTINCT SUMS *by* DIFFERENT MORTGAGEES, PART *of the money being advanced by* TRUSTEES. *Short form* (*a*).

PARTIES, A., *mtgor*, 1; B., *one mtgee*, 2: C., *anor mtgee*, 3; D. & E., *other mtgees* (*trees*), 4. *Recite title of A. as in a*

Recitals.

As to contributory mortgages.

(*a*) This Precedent is simpler and shorter than a contributory mortgage in the more usual form, with separate covenants for payment of each sum advanced, and separate powers of sale, &c., to each mortgagee (for a form of which see 2 Dav. Prec., pt. 2, p. 385); the mortgage in the text being, as between the mortgagor and mortgagees, in all respects on the ordinary footing of a mortgage to joint tenants, although as between themselves, the mortgagees collectively are trustees of the several sums secured for such of them as are entitled thereto. The disadvantage of this form is that no one of them can

Loan.

convce on sale, see Vol. I. p. 370 *et seq.* AND WHAS the sd B., C., & D., & E., have this day advced to the sd A. the sum of £6000 in the follg proportions, namely, the sd B. £1000, the sd C. £2000, & the sd D. & E., out of moys belonging to them on a jt acct £3000, upon an agrmt that the repaymt of the sd aggregate sum of £6000, with intt at the rate hinafter mentd, shl be secd to the sd B., C., & D., & E., as jt tenants in mner hinafter appearg, but that all ppal moys & intt hby secd (except the sd sum of £3000 & the intt thron), shl in equity belong to the sd B. & C., in the shares & proportions afsd as tenants in common in mner & subjt as hinafter mentd, & that the sd sum of £3000 & the intt thron shl in equity belong to the sd D. & E., as jt tenants in mner & subjt as hinafter mentd: NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, & in conson of the sums of £1000, £2000 & £3000 by the sd B., C., & D., & E., resply pd to the sd A. in proportions & mner afsd, the rect of wch sd sevl sums he the sd A. doth hby acknowe, *Covt by A. for paymt of* £6000 *& intt* p. 9, *& intt after default*, p. 10, *to* "B., C., & D., & E., or the survors or survor of them, or the exs or ads of such survor, their or his assns," (*b*): AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the con-

Witnesseth.

Covenant for payment.

Further witnesseth.

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call in his money or exercise the powers without the concurrence of the others, and that the form is not adapted to a case in which there are stipulations (such as for reduction of interest on punctual payment) affecting some only of the sums advanced. Another plan is to take the mortgage in the names of trustees nominated on behalf of all the lenders in the usual form not disclosing the trust, with a separate declaration of trust; see form, Vol. I., p. 614. Where an existing mortgage is transferred to contributories, the plan in the text, or perhaps preferably, the method of taking the transfer in the names of trustees, with a separate declaration of trust, will be proper.

In the absence of an express power, it is a breach of trust for trustees to invest on a contributory mortgage; *Webb* v. *Jonas*, 39 Ch. D. 660.

Covenant for payment where each contributory is a single person.

(*b*) If each contributory is a single person the covenant might take the following form:—"The sd A. hby covts with each of them the sd B., C., & D., septely to pay to him on the —— day of —— next, the sum adveed or contributed by him towards the sd loan of £—— as afsd, with intt for the same, &c., and further to pay to him intt at the rate afsd by equal half-yrly payments on the —— day, &c., on such sum or on any pt thof for the time being remaing unpaid," the advantage of which would be that each mortgagee would be able to sue for his own debt (though not to put in force his other remedies), without the concurrence of the others. See p. 11, form VI.

PREC. XIX.

Grant.

Proviso that as respects mortgagor, money is to be treated as advanced on joint account (*a*).

But as between mortgagees on separate accounts.

Covenant between

sons afsd, the sd A. as **benefl owner** doth hby grt unto the sd B., C., D., & E., *pcels, see Vol. I.*, p. 385, *et seq.*, *habendum to B., C., D., & E.*, "*their hrs & assns as jt tenants*," *subjt to redmon*, p. 14; *Provo for redmon*, p. 16, *on paymt of* £6000 *& intt to* "B., C., D., & E., or the survors or survor of them, or the exs or ads of such survor, their or his assns;" *Covt to insure & repair, if appropriate*, pp. 42 *or* 45; *Covt agst registron*, p. 50, *form* XXXVI.; *Mtgee's indemnity clause*, p. 59; PROVD ALWAYS, & it is hby agrd & decld that as betn the sd A., on the one pt, & the sd B., C., D., & E., on the other pt, the sd aggregate sum of £6000 shl be considered as belonging to the sd B., C., D., & E., on a jt acct, & accdly that the sd B., C., D., & E., & the survors or survor of them, & the exs or ads of such survor, their or his assns, shl be considered as entled to the sd aggregate debt of £6000 & intt hby secd, & their or his rect shl be an effectual dischge for the same & every pt thof resply, & that all powers & remedies available under these psnts for recoverg paymt of the moys hby secd, includg all powers & remedies conferred on mtgees by statute, shl be exerciseable & enforceable by them or him accdly, witht the concurrce of any other pson or psons who may be benefly entled to any of such moys; BUT NEVS as betn themselves, the sd B., C., D., & E., & the survors & survor of them, & the exs or ads of such survor, their or his assns, shl stand possed of all ppal moys & intt hby secd in trust for the sd B., C., D., & E., their respive exs, ads, & assns, as tenants in common (*b*) pari passu & witht any prefernce or priority in the shares hinbfe mentd, exceptg that the sd sum of £3000 & intt shl be considered as belonging to the sd D. & E. on a jt acct, & accdly that the sd D. & E., & the survor of them, & the exs or ads of such survor, their or his assns, shl be entled to the sd sum of £3000 & the intt thron, & their or his rect given to the sd B., C., D., & E., or the survors or survor of them, or the exs or ads of such survor, their or his assns, shall be an effectual dischge for the same: PROVD ALSO, & each of them

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(*a*) The provisions of the C. A., 1881, s. 61, do not apply to this case, and the clause in the text is necessary.

(*b*) As to what facts will establish a tenancy in common notwithstanding a joint account clause, and the absence of any express provision as to tenancy in common, see *Re Jackson*, 34 Ch. D. 732; *Steeds* v. *Steeds*, 22 Q. B. D. 537.

PREC. XIX.

Mortgagees to concur in proceedings.

the sd B., C., D. & E., doth hby covt with the others & other of them, their & his exs, ads, & assns, that each of them the sd B., C., D., & E., his hrs, exs, ads, & assns, will at at any time at the reqt of the others of them or their respive hrs, exs, ads, or assns, or any of them, take or concur in any steps or pcdgs (if & so far as his or their action or concurrce thrin may be requisite havg regard to the clause or provon lastly hinbfe contd or the circes of the case) wch may be necy or pper for callg in, recoverg or obtaing paymt of the ppal moys or intt hby secd, or any pt, thof, or exercisg, enforcg, or pursug any powers, remedies, or means for that ppose. IN WITS, &c.

XX.

PREC. XX.

MORTGAGE *of a* REVERSION *in* FEE *by way of* INDEMNITY *to a person who has become* SURETY *for the mortgagor.* POWER *of* SALE *either of the* REVERSION *or of the* WHOLE ESTATE *with the* CONCURRENCE *of the* TENANT *for* LIFE (*a*). COVENANT *for* PRODUCTION *of* DEEDS. VARIATIONS *for a* SHARE *of a* REVERSION.

Recitals. Will.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2. WHAS under the will of L., dated, &c., & proved of, &c., the sd A. is entled to [one eql undivided share [& may in certn events become entled to a further share or shares] of] the revon in fee simple expectant on the death of K. in the hds hinafter mentd, *or recite the will, &c., under wch A.'s title arises, at length; Jt & sevl bond from A. & B. to the —— Bankg Co, Limd, to secure the balce due from A. on an acct current with the Bank, settg out the condon fully, see Vol. I.*, p. 367; AND WHAS the sd B. entd into the sd bond as surety only for the sd A., & upon an agrmt that for the ppose of indemnifyg the sd B., his hrs, exs, & ads, in respt of his & their liability under the sd bond, the sd A. shd enter into the covts & exte the secy hinafter contd:

Agreement to indemnify surety.

Witnesseth.

NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of the premes, *Covt by A. for paymt on demand,*

Covenant to pay.

(*a*) See where the land is registered, Vol. I., p. 272, note, notice should in such case be given to the trustees of the settlement.

PREC. XX.

p. 12, *form* IX., "to the sd B., his hrs (*a*), exs, ads, or assns of all & every sum & sums of moy wch shl be recovered from him or them resply by virtue of the sd recited bond, & all costs, chges, & expses wch he or they shl incur or sustain by reason or in consequce of the sd bond or the suretyship effected thby, or orwise in respt of the premes, & until paymt of such moys, to pay to him or them resply intt thron, &c.": AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & in conson of the premes the sd A. **as benefl owner** doth hby grt unto the sd B. ALL THAT [undivided —— pt or share, *where the mtgor is contingently entled to other shares, add,* "& all & singr other the pt or share, pts or shares, este, rt & intt whatsr to wch the sd A. now is or may hrafter become entled in revon, remr or orwise under or by virtue of the sd will of the sd L.," of & in], *pcels, Vol. I.*, p. 385 *et seq.* (*b*). TO HOLD the same premes UNTO & TO THE USE of the sd B., his hrs & assns, subjt to the life este thrin of the sd K., & to the provo for redmon hinafter contd; *Provo for redmon*, p. 16, *of*, "the sd premes hby grtd" "*on paymt on demand*, "to the sd B., his hrs, exs, ads, or assns, of all & every the sum & sums of moy

Further witnesseth.

Grant.

Parcels.

Habendum.

To mortgagee.

(*a*) As the heirs of the mortgagee are bound in the bond, the indemnity and all powers to the mortgagee should be extended to them.

(*b*) Where the mortgage comprises a share of the real and residuary personal estate of a testator, an appropriate recital will be inserted above, the draft will require verbal alterations, and the grant will be of:

Variation for share of real and residuary personal estate of testator.

"ALL THAT & those the share & shares, este, & intt of him the sd A., under or by virtue of the last will of the sd L., or orwise howsoever, & whether psnt or future, vested or contingent, presumptive, expectant, or possible, & whether by way of succession, representon or orwise of & in all & singr the este, ppty & effects whatsr & wheresr & of what nature or kind soever now being in anywise subjt to the trusts or provons in the sd will of the sd testor decld & contd of & concerng his real & residuary psonal este & effects thby devised, bequed, & appted, & of & in all other este, ppty, & effects whatsr for the time being formg or representg the real & residuary psonal este & effects of the sd testor or any pt or pts or share or shares thof or thrin."

As to a sweeping assignment of this nature including mere expectancies and possibilities, see Elph. N. & C., Interp. 409; *Tailby* v. *Official Receiver*, 13 App. Cas. 523.

hinbfe covtd to be pd"; *Provo that mtge moy* "shl be deemed to become due on such demand being made," *form* IX., p. 28; PROVD ALWAYS that the power of sale conferred on mtgees by the Convcg & Law of Ppty Act, 1881, shl apply to this secy with power to exercise the same if thought fit with the concurrce of the sd K., or his assns, [& the pson or psons for the time being entled to the other pt or share, *if so, add,* "pts or shares" of the hds hinbfe descd in revon expectant on the death of the sd K., or any of such psons] in order to effect a sale of the sd hds in posson, [*or,* in order to effect a sale of the entirety or any share or shares of the sd hds & eir in posson or revon], & with power in such case to agree with the pson or psons concurrg in such sale for the apportionmt of the pchase-moy in such mner as may be thought pper;" *Covt agst registron,* p. 50, *form* XXXVI., after death of K., "of the hds [an undivided share in wch is] hby mtged or of any undivided share thrin"; *Mtgee's indemnity clause,* p. 59. AND the sd A. hby covts with the sd B., his hrs, exs, ads, & assns, that he, the sd A., his hrs, exs, ads, or assns, or the trees or tree for the time being of the sd will of the sd L. will at all times hrafter, unless prevented by fire or other inevitable accident, upon every reasble reqt of the sd B., his hrs, exs, ads, or assns, but at the cost of the sd A., his hrs, exs, ads, or assns, produce, or cause to be produced, to the sd B., his hrs, exs, ads, or assns, &c., *covt for prodon of munimts, Vol. I.,* p. 421, *form* I.; AND will also at the like reqt & cost make & furnish, &c., *copies & for safe custody, Vol. I.,* p. 424, *form* I.; AND FURTHER, that he, the sd A., his hrs, exs, ads, or assns, will, upon the dece of the sd K., *tenant for life,* or sooner with his consent, deliver, or cause to be delivered, the sd deeds & writgs to the sd B., his hrs, exs, ads, or assns, or as he or they shl require. IN WITS, &c.

Addition to statutory power of sale (*c*).

Covenant for production of deeds in hands of trustees (*d*).

For safe custody.

For delivery on death of tenant for life.

(*c*) See *In re Cooper*, 4 Ch. D. 802.

(*d*) As the deeds are not in the possession of the covenantor, the statutory acknowledgment is not available, see Vol. I., p. 422, note. As to the importance to a mortgagee of getting the deeds, see p. 81, note. Notice of the mortgage should, if possible, be endorsed on one or more of the deeds.

As to title deeds.

This mortgage, though by way of indemnity only, is chargeable with *ad valorem* stamp duty; *Lord Canning* v. *Raper*, 1 El. & B. 164; but under the Stamp Act, 1891, s. 88 (2), the stamp need not be affixed until some money actually becomes due under the mortgage.

Stamp.

As to estate duty, see note, Vol. I., p. 598.

Estate duty.

XXI.

PREC. XXI.

MORTGAGE *by a* HUSBAND *and* WIFE *of the* WIFE'S REVERSIONARY SHARE (*a*) *of a* FUND IN COURT, *a* SURETY *joining to covenant for payment of* INTEREST. *The* PRINCIPAL *is made* PAYABLE *on the* REVERSION *falling into* POSSESSION *or the* DEATH *of the* HUSBAND. POWER *to Mortgagee to obtain a* STOP ORDER.

PARTIES, A. & B., his wife, 1; C., *surety,* 2; D., *mtgee,* 3. *Recite will of X., bequeathing a legacy of £—— in trust for K. for life, remr for such of her chn as shd being sons attn twenty-one, or being daurs attn twenty-one or marry, with the usual advcemt & maintence clauses; Death of X. & probate:* AND WHAS the action of ——, *add referce to record,* was commenced in the yr —— in the Chancery Divon for the ppose of havg the este of the sd testor administered & the trusts of his will exted under the diron of the ct: AND WHAS in obedience to a diron contd in the order of the ct made on the —— day of —— on the further conson of the sd action, the sd sum of £—— less legacy duty was invested in the pchase of the sum of £—— 2¾ p.c. Consold Stk, wch was transferred into ct to the credit of

Recitals.

Action.

Sum set apart to answer share.

M. W. P. A., 1882.

(*a*) If the wife was married, or her title to the reversionary interest accrued after 1882, she would be able to dispose of it as a *feme sole* under the M. W. P. A., 1882, see p. 89, note. This Precedent is for a case where the wife was married and her title arose prior to 1883, so that the old law is applicable so far as regards the power of disposing of the property, and the mortgage must therefore be by deed acknowledged with the concurrence of the husband, under the Act 20 & 21 Vict. c. 57. As to the power of disposition of a married woman prior to that Act, and the changes effected thereby, see Vol. I., pp. 499—505, notes.

Reversionary interests of married women.

The Act 20 & 21 Vict. c. 57, applies only to reversionary interests acquired under an instrument executed after 31st Dec., 1857, and excepts from its provisions a reversionary interest to which a married woman is entitled under her own marriage settlement; so that where the settlement was before 1883, the wife cannot make a binding disposition by deed of her reversion under the usual ultimate trusts (in default of issue) of her own personalty; but under a settlement made since 1882, it is conceived that she would have full power under the M. W. P. A., 1882, s. 2, to dispose of such an interest subject to any restrictions expressly imposed by the settlement; but consider *Hancock* v. *Hancock*, 38 Ch. D. 78, and *Re Onslow*, 39 Ch. 622.

For a mortgage by a married woman as *feme sole* under the M. W. P. A., 1882, see Precedent XII., p. 88.

Estate duty.

As to estate duty, see note, Vol. I., p. 598.

Family.

Witnesseth.

Further witnesseth.

Assignment of shares.

Habendum.

To mortgagee.

the sd cause, "the acct of the legacy of K. & her chln :" AND WHAS the sd B. is one of the six chln of the sd K., and has attained the age of twenty-one yrs, but three of such chln are still under that age; *Agrmt for loan*, p. 1, *with agrmt that C. shd join as surety*, p. 4, *form* VII.: NOW THIS INDRE WITNETH, *&c., conson*, p. 9; *jt & sevl covt by A. & B. for paymt of ppal & intt after default*, p. 10; *covt by C. to pay intt on default of A. & B.*, p. 14, *form* XII., *mutatis mutandis* (*b*); AND THIS INDRE FURTHER WITNETH that in psuance of the sd agrmt & for the conson afsd, the sd B. **as benefl owner** with the concurrce of the sd A., doth hby assn & the sd A. **as benefl owner** doth hby assn & confirm unto the sd D., ALL THAT the pt or share or pts or shares to which the sd B. or the sd A. in her rt now is or may hrafter by means of the death of any one or more of the other chln of the sd K. witht attaing a vested intt or by any other means become entled under the sd will or orwise howsoever (*c*), of & in the sd sum of £——2¾ p.c. Consold Stk, or other the stks, funds, or secs for the time being constitutg or representg the sd legacy of £——, or any pt thof, & of & in all accumulons wch may be added thto, TOGR WITH all powers & remedies for recoverg and obtaing paymt & transfer of the sd share or shares & premes hby assned: TO HOLD the same premes unto the sd D., subjt to the provo for redmon hinafter contd; *Provo for redmon to B.*, p. 17, *form* III., *with varions as in Prec.* XI., p. 88; *Provo for continuce*

(*b*) The following is a form of covenant by the tenant for life for payment of interest :—

Covenant by tenant for life as surety for payment of interest and charge thereof on his life interest.

"And the sd, *tenant for life*, doth hby covt with the sd D. that the sd, *tenant for life*, will at all times durg his life, if the sd sum of £——, or any pt thof, shl so long remain owing on the secy of these psnts, pay to the sd, *mtgee*, on demand the intt on the sd sum of £——, or on so much thof as shl for the time being remain unpd, in case of default being made by the sd, *mtgors*, their hrs, exs, or ads, in such paymt & that all intt to become payable upon or in respt of the sd sum of £——, or any pt thof durg the life of the sd, *tenant for life*, shl be a chge upon & payable out of the income of the sd trust premes subjt to the trusts of the sd will, & the sd, *tenant for life*, doth hby chge the sd income with the paymt of the sd intt accdly."

(*c*) See *Re Clarke*, 35 Ch. D. 109; 36 Ch. D. 348.

PREC. XXI.

Proviso as primary liability as between mortgagor and surety.

Power to obtain stop order (*a*).

of loan for a term certn, p. 33, *saying*, "shl not bfe the death of the sd K., or of the sd A., wchever shl first happen, call in, &c.;" *Mtgee's indemnity clause*, p. 59; Provd always & it is hby agrd that as betn the sd A., B., & C., resply, & their respive hrs, exs, & ads, & the sd mtged premes, the sd A., his hrs, exs, & ads, shl be primarily liable to the paymt of the ppal moys & intt hby secd; *Provo that D. is not to be affected by the last declaron*, p. 37; *Declaron that C. shl be liable as a ppal debtor for the intt*, p. 37, *form* xx., *mutatis mutandis:* And the sd A. & B. do hby empower the sd D., his exs, ads, & assns, at the cost of the sd A., his exs or ads, to apply for & obtain an order in the sd action, prohibitg the share or shares & premes hby mtged, or any pt or pts thof, from being pd or transferred out of ct witht notice to the sd D., his exs, ads, or assns, & upon such applicon to use the names of the sd A. & B. as consentg thto, & to instruct solors & counsel accdly on their respive behalf. In wits, &c.

XXII.

PREC. XXII.

MORTGAGE *of a* Reversionary Interest (*b*) *in* Settled Personalty, *and* Policy *of assurance on the* Death *of the* Mortgagor *in the* Lifetime *of the* Tenant for Life, *the mortgage* Debt *being payable on the*

As to stop orders.

(*a*) As to the priority conferred by obtaining a stop order, see *Pinnock* v. *Bailey*, 23 Ch. D. 497; *Re Holmes*, 29 Ch. D. 786; *Mutual Life Assurance Society* v. *Langley*, 32 Ch. 460; *Mack* v. *Postle*, [1894] 2 Ch. 449, and where there is a derivative settlement, *Stephens* v. *Green*, [1895] 2 Ch. 148. Where a mortgagee is empowered by the mortgage deed to obtain a stop order, he is entitled to his costs of doing so (*Waddilove* v. *Taylor*, 6 Hare, 307). As to the importance of obtaining a fresh stop order on making a further advance, see *Macleod* v. *Buchanan*, 33 Beav. 234; 4 De G. J. & S. 265. The application may now generally be made by summons, but a petition is necessary where a fund exceeding £1,000 has been paid into court under the T. A., 1893, s. 42, and no prior application has been made in the matter of the fund (*Re Toogood*, W. N. 1887, p. 109); as to stop orders generally, see R. S. C., 1883, Order 46; Seton, 417—422; Daniell's Chancery Practice, 1633 *et seq.* The order should distinguish between capital and income affected by it (*Mack* v. *Postle*, [1894] 2 Ch. 449). As to the protection afforded to incumbrancers by a fund having been carried to a separate account, see *Re Eyton*, 45 Ch. D. 458.

(*b*) The trustees are not bound to hand over to the mortgagee more than sufficient to satisfy what is due to him. *Re Bell*, [1896] 1 Ch. 1; *Hockey* v. *Western*, [1898] 1 Ch. 350.

reversion or policy falling into POSSESSION. PROVISIONS *for payment of* COMPOUND INTEREST *at the* OPTION *of the* MORTGAGOR, *and for the* POLICY *being kept up by the* MORTGAGEE. VARIATION *where* INTEREST VARIES *according to* BANK RATE (*c*).

Recitals.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2. *Recite the marre settlemt of the father & mother of A., whby psonalty was vested in*

As to mortgages to secure compound interest.

(*c*) As to mortgages for securing compound interest, see 2 Dav., pt. 2, p. 360 *et seq.* As to the stamp duty, see Stamp Act, 1891, s. 88; and that moneys to be advanced for keeping up the policy are not liable to *ad valorem* duty, see *ib.* sub-s. (3). As to estate duty, see Vol. I., p. 598, note. As to mortgages of policies of insurance, and the invalidity of fetters on redemption, see *Marquis of Northampton* v. *Pollock*, 45 Ch. D. 190; [1892] A. C. 1; where, however, the reasoning of the dissentients, Bowen, L.J., below, and Lord Hannen, above, deserves attentive consideration; and see the subject discussed in the Juridical Review, Vol. IV., p. 25.

As to the stamp in respect of the policy, see p. 97, note. As to stop orders see *ante*, p. 114.

As to notices: distringas.

Enquiries must be made from trustees of the reversion, and notice must be given to them and to the insurance office. If the trust property comprises stocks transferable at the Bank of England, or the stocks, shares, or securities of any public company, whether incorporated or not, security against malversation by the trustees, and injurious transposing of investments, may be obtained by giving notice to the bank or company, supported by affidavit, under R. S. C., 1883, Order XLVI., the effect of which is similar to that of the old writ of distringas under 5 Vict. c. 5, s. 5, which was abolished by the corresponding rules of 1880; see notes thereto in the Annual Practice; Seton, 619; see also as to distringas, and as to restraining orders under s. 4 of the above Act, 2 Dav. Prec., pt. 2, p. 577, note. The doctrine of notice to trustees is discussed *post*, p. 291, note. The following clause may sometimes prove useful.

"It is hby agrd that the *mtgee*, his exs, ads, or assns, may at any time or times hrafter durg the continuce of this secy at the cost of the *mtgor*, his exs, ads, or assns, give all such notices to the trees or tree for the time being of the ppty hby mtged & obtain such stop or other orders, take such pcdgs, & do such other acts as may be necy to restrain the *mtgor*, his exs, ads, or assns, or the sd trees or tree from sellg or orwise dealg with the ppty now or hrafter formg pt of the trust premes witht notice to the *mtgee*, his exs, ads, or assns, & that the *mtgor*, his exs, or ads, shl, on demand, pay to the *mtgee*, his exs, ads, or assns, all costs incurred by him or them in respt of the premes with intt thron at the rate afsd from the time when such costs shall be incurred until repaymt, & that until repaymt such costs with intt at the rate afsd shl be a chge on the ppty hby mtged; & further that the *mtgor*, his exs, ads, &

Policy.

Witnesseth.

Covenant to pay principal and sums advanced for premiums,

with compound interest.

Clause as to capitalisation of interest.

trees upon trust for the father & mother successively for life, with remr to the chln who shd attn twenty-one, &c.; The marre of the father & mother; The death of the mother; That A. is the only child of the marre who attned twenty-one; The psnt state of investmt of the trust funds: AND WHAS the sd A. has effected a poly of assurce in the —— Assurce Socy dated the —— day of ——, & nod ——, whby the sum of £—— is assured to be pd to the exs or ads of the sd A. within —— calr months after his death in the event of his dying durg the lifetime of the sd K., *the father; Agrmt for loan,* p. 1, *with agrmt for paymt of compound intt,* p. 4; NOW THIS INDRE WITNETH, &c., *conson, rect, Covt by A. with B.,* "to pay to him at the expiron of three calr months after the death of such one of them, the sd A. & K., as shl first die, the sd sum of £——, *the ppal,* & all sums wch the sd B., his exs, ads, or assns, shl have expended in the meantime in keepg on foot the sd poly hinbfe mentd, or in effectg or keepg on foot any substituted poly or pols to be effected as hinafter is mentd, togr with compound intt at the rate of —— p.c. p.a. [at a rate varying, &c., p. 12, *note*] on the sd sum of £——, & on the sums so expended as afsd; THE INTT on the sd sum of £—— to commce from the date of these psnts, & on the sums of moy expended as afsd from the time of the same resply being expended, & all such intt to be capitalised half-yrly on the —— day of —— & —— day of —— in every yr until the time hinbfe appted for paymt of the aggregate amt due on the secy of these psnts (*a*), & so that on every half-yrly day for makg a rest as afsd, the intt up to that day shl be added to the ppal sum owing so as to form

assns, will at his or their costs during the continuce of this secy, at the reqt of the *mtgee,* his exs, ads, or assns, obtain from the sd trees or tree for the time being, & give to the *mtgee,* his exs, ads, or assns, such infornon as to the investmts or dealings with the trust premes as the *mtgee,* his exs, ads, or assns, may require."

It is the duty of a trustee to give a remainderman, though only contingently entitled to a share, an authority to enable him to obtain information from the Bank of England as to charging orders, stop orders or distringases upon a fund in consols standing in the trustee's name, see *Re Tillott*, [1892] 1 Ch. 86.

(*a*) As to what the mortgagee can prove for if the mortgagor becomes bankrupt before the death of the tenant for life, see *Re Browne and Wingrove*, [1891] 2 Q. B. 574; *Wallace* v. *Universal, &c., Co.*, [1894] 2 Ch. 547.

one aggregate sum, carrying intt at the rate afsd : AND FURTHER, in case the aggregate sum hinbfe covted to be pd or any pt thof shl remain unpd after the time hinbfe appted for paymt thof, to pay to the sd B. intt on such aggregate sum, or on so much thof as shl for the time being remain unpd at the rate afsd by eql half-yrly paymts, the first of such half-yrly paymts to be made at the expiron of six calr months from the time appted for paymt of the sd aggregate sum as afsd : PROVD ALWAYS that the sd A., his exs or ads, shl be entled on any half-yrly day for makg a rest as afsd to pay to the sd B. the whole or any pt (not being less than £—— at any one time), of the amt then owing in respt of sums expended as afsd, & of intt (whether capitalised or not) in redon of the aggregate amt owing as afsd : AND THIS INDRE ALSO WITNETH that in further psuance of the sd recited agrmt & for the conson afsd, the sd A., **as benefl owner,** doth hby assn unto the sd B., First, ALL THE ppty now subjt to the trusts decld by the sd recited indre of settlemt, or wch by means of any change of investmt or orwise may from time to time be substituted for the same resply or any pt thof; And secondly, ALL THAT the sd poly of assurce effected on the life of the sd A. as hinbfe mentd, & all moys assured by or to become payable under the sd poly & the full benefit thof, TOGR WITH all powers & remedies for recoverg & obtaing paymt & transfer of the sd respive premes : TO HOLD the same premes unto the sd B., subjt as regards the sd premes first hinbfe descd & assned to the este & intt of the sd K. durg his life thrin, & subjt as regards all the sd premes to the provo for redmon hinafter contd, *Provo for redmon,* p. 17, *on paymt,* "at the expiron of three calr months after the death of such one of them, the sd A. & K., as shl first die," *of,* "the aggregate amt hinbfe covted to be pd ;" *Covt by A. to keep up poly,* p. 40, *down to the end of the provon that new pols are to be subjt to the secy, omittg throughout the words,* "at his own cost :" PROVD ALWAYS, & it is hby agrd that it shl not be incumbent on the sd A., unless he shl think fit so to do, to pay any premiums or moys for keepg on foot the sd origl poly, or effectg or keepg on foot any such substituted poly, AND in case he shl at any time neglect or refuse to make the paymts afsd or any of them, it shl be lful for the sd B., his exs, ads, or assns, to pay the same; BUT nevs the sd B., his exs, ads, or assns, shl not,

Covenant for payment of interest after default.

Power to pay off sums advanced for premiums and capitalised interest.

Further witnesseth.

Assignment of settled funds.

Policy.

Habendum.

To mortgagee.

Proviso that mortgagor need not pay premiums.

That mortgagee may do so.

PREC. XXII.

under any circes, be responsible for any omission or refusal to keep on foot or renew the sd origl or any substituted poly, nor for any losses or expses wch the sd A., his exs, ads, or assns, may suffer by reason of any such omission or refusal; *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

XXIII.

PREC. XXIII.

MORTGAGE *of* WIFE'S CONTINGENT REVERSION (*a*) *belonging to her for her* SEPARATE USE *and a* POLICY *on her life effected for her* SEPARATE USE *under the* MARRIED WOMEN'S PROPERTY ACT, 1870 *or* 1882 (*b*). PROVISION *for continuing* LOAN *for a* TERM (*c*).

Recitals.

PARTIES, A., & B., his wife, 1; C., 2. *Recite will of X. bequeathg the testor's residuary real & psonal este in trust for conversion & investmt of the proceeds, & declarg trusts of such proceeds, subjt to paymt of debts & legacies, for K., the testor's widow for life, with remr for such of his chln as shd survive her & attain twenty-one or marry, & the issue of such of them as shd be then dead per stirpes, with the usual advancemt & maintence clauses* [*& a declaron that all beqts to married women shd be for their septe use*]; *Death of testor & probate:* AND WHAS the funl & testy expses, debts & legacies of the sd testor have all been pd, & his residuary real & psonal

Adminis-tration of estate.

(*a*) See notes to last two Precedents.

Power of married woman to effect policy for her separate use.

(*b*) See the Acts, 33 & 34 Vict. c. 93, s. 10, and 45 & 46 Vict. c. 75, s. 11. The former Act provided that a married woman might effect a policy on her own life, or that of her husband, for her separate use, and the latter Act, which repeals the former, contains a similar provision. The husband is made a party to the mortgage in order to covenant for payment and for keeping up the policy, the money being advanced to him, and he is also made to confirm the assignment in order to imply covenants for title by him. If desired the covenants for payment, &c., may be joint and several by the husband and wife as in Precedent XXI.; see p. 112, note. The form of the mortgage will be substantially the same, whether the wife's title to the reversion and policy arose under the old law, or she was married, or her title accrued since 1882, so as to be under the M. W. P. A., 1882, as to which see p. 87, note. The variations where the husband does not concur will be obvious.

(*c*) As to estate duty, see Vol. I., p. 598, note. As to the precautions to be taken when the land is registered, see Vol. I., p. 272.

este so far as the same has been ascertained now consists of, or is represented by the ppty specified in the schdle hto and the duties due thron in respt of his death have been pd [& the sd exors have assented to the residuary devise & beqt in the sd will contd]:

Widow living.

AND WHAS the sd K. is still living:

Family.

AND WHAS there are six chln of the sd X. now living, three of whom, includg the sd B., have attned the age of twenty-one, & the remaing three of such chln are still under that age, & one child of the sd X. has died leavg issue:

Title of wife.

AND WHAS under the circes afsd, the sd B. is entled [for her septe use, independently of the sd A.], to one-seventh share of the trust premes constitutg or representg the residuary este of the sd X., in revon expectant on the dece of the sd K., & contingently upon the sd B. outlivg the sd K., such share being susceptible of augmenton by the death of any of the other chln of the sd X. in the lifetime of the sd K. witht issue or by the death of any of such chln at any time under the age of twenty-one yrs; *Agrmt for loan to A.*, p. 1:

Policy.

AND WHAS [as pt of the intd secy] the sd B. has effected & is entled to the poly of assurce hby assned; *First testatum, covts by A. for paymt as in Prec.* I., p. 68:

Further witnesseth.

AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd the sd B., as **benefl owner** doth hby assn, & the sd A. as **benefl owner** doth hby confirm unto the sd C.,

Assignment of share.

ALL THAT one eql seventh pt or share, or other the share & intt to wch the sd B. is or will upon the dece of the sd K., or orwise become entled in the event of her survivg the sd K., of & in the ppty specified in the schdle hto, or hrafter constitutg, arisg from, or representg the residuary real & psonal este of the sd X., or any pt or pts thof, & the income thof, and accumulons added thto:

Policy.

AND ALSO all that the poly of assurce in the —— Associon on the life, & in the name, of the sd B., dated, &c., & nod, &c., & under the annl premium of £—— whby the sum of £—— is assured to be pd to the exs, ads, or assns of the sd B., in the event of her death in the lifetime of the sd K., & the sum of £—— thby assured, & all moys to become payable thrunder & the full benefit thof: TOGR WITH all powers & remedies for obtaing & compellg paymt & transfer of the sd share & premes first hinbfe assned, & the moys assured by or to become payable under the sd poly: *Habendum to C. subjt to redmon*, p. 14; *Provo for redmon*, p. 17, "on paymt by the sd *A.*, his hrs, exs, PREC. XXIII.

or ads, or the sd B., her exs, ads or assns, or any of them," *the reassnmt to be made,* "to the sd B., her exs, ads, & assns, as her septe ppty & este, independently of the sd A., or as she or they shl direct;" *Provo for continuce of loan for a term certn,* p. 33, "if the sd A., his hrs, exs, or ads, or the sd B., her exs, ads, or assns, shl on every half-yrly day, &c.;" &, *addg at the end of the clause,* "except so far as the sd ppal sum may become satisfied, in the meantime, by the retainer by the sd C., his exs, ads, or assns, of any moys reced or realised by him or them in respt of the sd share, poly, or premes afsd"; *Provo that,* "the sd A., his hrs, exs, or ads, or the sd B., her exs, ads, or assns shl not," *be at liberty to pay off for a term certn,* p. 33; *Covt by A. with C. to keep up the poly,* p. 40, *with the follg varions, that B. shl not do anythg to vitiate the poly, & that A., his exs or ads, or B., will enable C. to renew poly, & that A., his exs or ads, will pay the premiums & deliver the rects, & that if A., his exs or ads, shd neglect so to do, power to C. to keep up the poly, & that A., his exs & ads, will repay all moys expended by C., in keepg up the poly or in effectg any new poly, with intt, & mtged premes to be chged with the paymt; Add, if need be, clauses as to husbd being primarily liable for the debt, &c., see Prec.* XXI., p. 112]. *Mtgee's indemnity clause,* p. 59. IN WITS, &c. (*a*).

[*Schdle.*]

XXIV.

PREC. XXIV.

MORTGAGE *of* FREEHOLDS *to a* BUILDING SOCIETY *incorporated under the* BUILDING SOCIETIES ACT, 1874. VARIATIONS *for* LEASEHOLDS *and* COPYHOLDS, *and in* OTHER *respects. Concise form* (*b*).

PARTIES, A., a member of the —— Bldg Socy, incorpd under the Bldg Societies Act, 1874 (hinafter called the mtgor, wch

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(*a*) Enquiries to be made from and notice to be given to the trustees of the will, and to the insurance office; and see p. 96, note. As to the stamp in respect of the policy, see p. 97, note.

(*b*) This Precedent is adapted to a society originally formed under the expression shl include also his hrs, exs, ads, & assns, where the context so admits), 1; the sd —— Bldg Socy (hinafter called

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Building Societies Act, 1874 (37 & 38 Vict. c. 42), or to one formed under the repealed Act, 6 & 7 Will. IV. c. 32, and which has obtained a Certificate of Incorporation under the Act of 1874 (see the Amendment Acts of 1875, 1877, 1884 and 1894; 38 & 39 Vict. c. 9; 40 & 41 Vict. c. 63; 47 & 48 Vict. c. 41; and 57 & 58 Vict. c. 47). In the case of a society formed under the repealed Act, and not incorporated under the Act of 1874, the mortgage must be taken in the names of the trustees. In the case of this Precedent it is assumed that the mortgagee's powers are either provided for (as usual, but not a plan to be recommended) by the rules, which are incorporated, or are to be dependent on the C. A., 1881, which, however, requires modification to adapt it to a security of this kind; otherwise short express powers, excluding or partially incorporating the statutory powers, should be inserted, which may be taken from the next precedent of a mortgage to an Industrial and Provident Society. The latter course would perhaps be more convenient than to rely on the statutory powers with a clause modifying them as in p. 124, note. As to mortgages of copyholds, see the Building Societies Act, 1874, ss. 25, 28. As to the powers of directors of a building society generally with regard to lending on mortgage, see *Sheffield, &c., Building Society* v. *Aizlewood*, 44 Ch. D. 412. By the Building Societies Act, 1894, s. 13, societies are prohibited from advancing money on second mortgage unless the first mortgage is in their favour. Mortgages to Building Societies were formerly exempt from stamp duty, but by 31 & 32 Vict. c. 124, s. 11 (re-enacted by the Stamp Act, 1891, s. 89), the exemption was repealed as to mortgages by *members* above £500, and as to all mortgages by *non-members;* and in case of societies under the Act of 1874, there is no exemption (see s. 41). The mortgage in the text appears to be chargeable with duty on the amount of the advance, under the Stamp Act, 1891, s. 87 (2).

As to mortgages to building societies.

These mortgages may be discharged on redemption by an ordinary re-conveyance or by a mere receipt, see the Act of 1874, s. 42, and the Act of Wm. IV. s. 5. As to the effect of the endorsed receipt, see *Prosser* v. *Rice*, 28 Beav. 68; *Pease v. Jackson*, L. R. 3 Ch. 576; *Fourth City, &c., Society* v. *Williams*, 14 Ch. D. 140; *Robinson* v. *Trevor*, 12 Q. B. D. 423; *Harvey* v. *Municipal, &c., Society*, 26 Ch. D. 273; *Sangster* v. *Cochrane*, 28 Ch. D. 298; *Carlisle Banking Co.* v. *Thompson*, 28 Ch. D. 398; *Hosking* v. *Smith*, 13 App. Cas. 582. A reconveyance or receipt is exempt from Stamp Duty, see 10 Geo. IV. c. 56, s. 37, incorporated in 6 & 7 Will. IV. c. 32, as to unincorporated societies; and 37 & 38 Vict. c. 42, ss. 41, 42, as to incorporated societies, *Old Battersea, &c., Society* v. *Inland Revenue Commissioners*, [1898] 2 Q. B. 294.

Redemption.

As to the law of Building Societies, see Wurtzburg on Building Societies. As to mortgages to Building Societies by executors, see *Thorne* v. *Thorne*, [1893] 3 Ch. 196.

As to the application of a provision, in the rules of a building society, for reference of disputes to arbitration, to questions arising under a mortgage, see as to the old law under the Act of 1874, *Hack* v. *London Provident Building Society*, 23 Ch. D. 103; *Municipal, &c., Society* v. *Kent*, 9 App. Cas. 260. The law has now been altered by the Building Societies Act, 1884 (47 & 48 Vict. c. 41), s. 2; see *Western Suburban, &c., Society* v. *Martin*, 17 Q. B. D. 66, 609. The alteration is subject, however, to express provision in the rules; *Walker* v. *General, &c., Society*, 36 Ch. D. 777.

Arbitration.

Where the land is registered a charge in favour of a building society may be

Registered land.

PREC. XXIV.

Witnesseth.

the Socy, wch expression shl include also the assns of the Socy, where the context so admits), 2 (*a*); WITNETH that in conson of the sum of £—— this day advanced by the Socy to the mtgor (being the amt to wch he is entied accdg to the rules of the Socy, [& in parlar accdg to the rules under the head ——,] in respt of —— shares held by him in the Socy), the rect of wch is hby acknowed, the mtgor hby covts with the Socy to pay to the Socy, accdg to the rules thof, the sum of £—— per [month] durg the period of —— yrs, to be computed from the —— day of ——, the first of such paymts to be made on the —— day of ——, & the subseqt paymts to be made at regular successive intervals of [one month] durg the whole of the sd period witht dedon, but so nevs that, as to any day on wch any such paymt shl fall due wch shl not be a day of meetg of the Socy, the sum fallg due on that day shl be payable on the first day of meetg next ensug, AND ALSO duly & punctually to pay as & when the same shl resply become payable all such fines, fees, or other moys as may become payable by the mtgor under the —— rule, or any other rule or rules of the Socy for the time being (*c*) in respt of the shares held by him the mtgor as afsd (*d*): AND THIS INDRE FURTHER WITNETH that

Covenant for payment of instalments (*b*).

And fines.

Further witnesseth.

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made by a mortgage in pursuance of or consistent with the rules of the society which has to be registered, L. T. A., 1897, s. 9 (3); as to delivery of the instrument of charge, see L. T. R. 163; and as to discharges, see L. T. R. 113. As to provisions for protection of mortgagee of unregistered land, see pp. 4, 37, notes.

Variation for copyholds.

(*a*) For copyholds, add, "B., C., & D., trees appted by & on behalf of the Socy (hinafter called the trees, wch expression shl include also their hrs & assns, where the context so admits), 3."

(*b*) As to the right of proof in bankruptcy where the mortgage is to secure instalments of principal and interest, see *Ex parte Bath*, 22 Ch. D. 450.

(*c*) As to an alteration of the rules after the date of the mortgage, see *Rosenberg* v. *Northumberland Building Society*, 22 Q. B. D. 373; *Bradbury* v. *Wild*, [1893] 1 Ch. 377.

(*d*) The following clause providing for the whole principal monies becoming due in case of default should be added here if so intended:—

Provision for whole principal money becoming due on default.

"Provd always, & it is agrd that in case at any time any instalmt or other moys wch shl be payable by the mtgor to the Socy under the covt hinbfe contd shl be in arrear & unpd for one calr month, *or*, 'for —— monthly meetgs,' after the same shl have become due, in breach of the rules afsd or of the covt hinbfe contd, then & in such case the whole of the future instalmts of ppal moy thrafter to become due & payable in respt

Conveyance. Parcels. Habendum.

for the conson afsd the mtgor, **as benefl owner,** hby grts (*e*) *for leasehds,* "assns," *or,* "demises," unto the Socy (*f*) ALL the hds descd in the schdle hto, *habendum for freehds,* p. 14, *form* I.; *for leasehds,* p. 14, *form* II., *in eir case say,* "the Socy," *& for leasehds, instead of,* "the sd term of —— yrs grted by the sd indre of lease," *say,* "the term of —— yrs, grted by an indre of lease, dated, &c., & made, &c.": PROVD ALWAYS, & it is hby agrd

Proviso for redemption (*g*).

—— —— —— ——

of the sd advce shl immedly on the expiron of the sd period of one calr month become due & payable by the mtgor to the Socy in addon to the instalmt & moys in arrear as afsd, & shl be recoverable by the Socy with intt at the agrd rate by action agst the mtgor or by the exercise & enforcemt of any of their powers or remedies in that behalf."

Variations where mortgage is to secure subscriptions.

If the mortgage (as in many of the older societies) is to secure, not (as in the text) the repayment of the sum advanced by instalments, but the payment by the advanced member of his subscriptions and other contributions to the funds of the society according to the rules, the mortgagor will covenant for payment of "all the [monthly] subscriptions wch, accdg to the rules for the time being of the Socy, shl from time to time become payable by the mtgor in respt of the sd —— shares [calculated on the —— yrs' scale, that is to say, the sum of £—— per month on the first Monday in every month for the period of —— yrs from the —— day of ——], & all fines & other moys wch, accdg to the sd rules, shl become due on the sd shares," instead of as in the text, and corresponding modifications will be made in the other clauses. As to the mode of taking the account where the loan is repayable by instalments, and an annual premium is charged against the borrower on his shares, see *Harvey* v. *Municipal, &c., Society*, 26 Ch. D. 273.

Variation for copyholds.

(*e*) In a mortgage of copyholds substituting for the conveyance and proviso for redemption the following: "the mtgor, **as benefl owner,** hby covts with the Socy that he the mtgor, & all other necy pties, if any, will forthwith at his or their own cost surrender ALL THE hds descd in the schdle hto, TO THE USE of the trees & their hrs accdg to the custom of the manor, subjt to a condon for makg void such surrender on paymt by the mtgor to the Socy, accdg to the rules thof, of the sd monthly & other sums of moy, fines, & fees, psuant to the covt in that behalf hinbfe contd." Add declaration of trust for the trustees till surrender, and power of attorney, p. 30.

"In fee simple" not appropriate to corporations.

(*f*) The enactment in the C. A., 1881, s. 51, enabling a fee simple to be limited by the words "in fee simple," without the word "heirs," does not seem to make the expression appropriate to conveyances to corporations any more than before the Act; but the words have come considerably into use in that case, and they are of course harmless.

(*g*) See the Building Societies Act, 1874, s. 42, p. 120, note (*b*).

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that if the mtgor shl duly & punctually pay to the Socy accdg to the rules thof the sd monthly & other sums of moy, fines, & fees, psuant to the covt in that behalf hinbfe contd, then & in such case this secy shl be vacated by a rect or reconvce psuant to the statute in that behalf & the rules for the time being of the Socy, or orwise as the mtgor shl direct; *In mtge of leasehds by demise, add declon of trust of nominal revon, &c.*, p. 30 (*a*)]; PROVD ALWAYS, & it is hby agrd, that the rules for the time being of the Socy under the head, *insert the numbers & heads of the rules applicable*, or such of them as are capable of applying to this transon, shl apply hto as if hrin inserted with

Rules of Society incorporated.

Provisions as to statutory powers of insurance, appointing receivers, and sale.

(*a*) The following is a clause modifying the statutory powers of insurance appointing receivers and sale, if they are relied on; see as to these powers, p. 42, note, p. 52, note, and p. 20, note. As to the statutory leasing powers, see p. 46, note.

"AND IT IS HBY AGRD that the powers of insce agst fire conferred on mtgees by statute shl be exercisable by the Socy in case the mtgor shl omit or neglect to keep the sd mtged premes pperly insured, or to produce to the Socy or to any of their officers on demand the poly of such insce or the rect for the current yr's premium, AND that the power of apptg recers conferred on mtgees by statute shl be forthwith exercisable in case default shl be made by the mtgor for one monthly meetg of the Socy in paymt of some instalmt or moys wch shl have become due by him to the Socy under this secy, or the rules of the Socy, & that any moys recd by any recer so appted shl, after makg any prior paymts wch ought pperly to be made thereout psuant to the sd statute, be applied in dischge of the instalmts & moys wch shl have become due under these psnts, & the surplus only of the moys so recd which shl remain after makg all such paymts shl be pd to the mtgor, AND that the power of sale conferred by statute on mtgees shl become forthwith exercisable by the Socy in case default shl be made by the mtgor for three monthly meetgs in paymt of any instalmt or moys wch shl have become due to the Socy as afsd, [or in the observce or pformce of any of the sd rules, or in case the mtgor shl become bkpt, or make or enter into any arrangemt or composon with or for the benefit of his credors or shl regr the lands hby conveyed,] & the requiremts & restrons of the sd statute as to givg notice prior to the exercise of the sd power of sale shl not apply to this secy."

the necy modificons, AND ALSO that the other rules for the time being of the socy so far as capable of applying to this transon, & except so far as the same are hby varied or departed from or are inconsistent with any of the provons hrof, shl also (though not expressly refd to) apply to this transon; (b) *Mtgee's indemnity clause*, p. 59 [*Clause keepg alive rt of consolidon*, p. 59]. IN WITS, &c.

[*Schdle of pcels.*]

(*b*) For the usual form of a transfer of a mortgage of this nature, see post, p. 224. It will be observed that a transfer cannot be made in that form without the concurrence of the person entitled to the equity of redemption, and it is by no means clear that a transfer made without his concurrence is valid, *Re Rumney & Smith*, (1897) 2 Ch. 351. To obviate this difficulty it has been suggested that the following clause should be added in this place:—" Provd always & it is hby agrd & decld that at any time after any instalmt or other moys, *continue as in note* (*d*), p. 122, *down to* " in breach of the rules afsd or the covt hinbfe contd " [*or* after the power of sale conferred by these psnts & the statute in that behalf shl have become exerciseable] it shl be lawful for the Socy, on paymt to them of the sum then required to redeem the premes hby mtged, to transfer the moys hby secd & all intt thenceforth to become due for the same & the benefit of all secs for the same to the pson or psons makg such paymt who is & are hinafter called the transferees, wch word shl include his or their exs, ads, & assns, & that after such transfer, the rules of the Socy shl cease to apply to this transon & the premes hby mtged shl be redeemable only on paymt to the transferees at the expiron of six calr months from the date of the transfer of the sum so pd with intt thron from the date of the transfer, in the meantime at the rate of 4 p.c. p.a., & further that the premes hby mtged shl be chgd with paymt to the transferees of intt at the rate afsd on the ppal moys for the time being due on this secy by equal half-yrly paymts in every yr, the first of such paymts to be made at the expiron of six calr months from the date of the transfer, and that a recital in any such transfer as to the amt required to redeem the premes hby mtged shl as betn the mtgor & the transferees & all psons claimg under them resply be conclusive.

XXV.

PREC. XXV.

MORTGAGE *of* FREEHOLDS *to an* INDUSTRIAL *and* PROVIDENT SOCIETY *by a* MEMBER *to secure the* PURCHASE-MONEY *of a* TENEMENT *by* WEEKLY INSTALMENTS *according to the* RULES. VARIATIONS *for* LEASEHOLDS *and* COPYHOLDS. PROVISIONS *for* INSURANCE *against fire;* POWERS *to the Mortgagees of* ENTRY, *appointing a* RECEIVER, LEASING, *and* SALE. *Concise form* (*a*).

PARTIES, A., a member of the —— Co-operative Bldg & Land Socy, Limd, havg —— pd-up shares thrin (hinafter called the mtgor, wch expression shl include his hrs, exs, ads, & assns, where the context so admits), 1; The sd —— Co-operative Bldg & Land Socy, Limd, a Socy registered under the Industrial & Provident Societies Act, 18— (hinafter called the Socy, wch expression shl include the assns of the Socy), 2 (*b*): WITNETH that in conson of the sum of £——, this day pd to the mtgor by the Socy out of its funds, the rect whof is hby acknowed, the mtgor hby covts with the Socy that the mtgor will repay to the Socy the sd sum of £—— with intt at the rate of —— p.c. p.a., within a term of —— yrs & —— calr months to be computed from the —— day of ——, by eql weekly instalmts of £——, accdg to the rules of the sd Socy, the first of such instalmts to be pd on the —— day of ——, & the last on the —— day of ——, AND WILL also duly & punctually pay to the Socy all fines, dues, & moys wch may,

Witnesseth.

Covenant to pay by instalments,

to pay fines,

The Industrial and Provident Societies Act.

(*a*) See the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), repealing 39 & 40 Vict. c. 45, by which the previous Acts were consolidated and amended. As to previously existing societies see s. 3. By s. 21 the effect of registration is to render the society a body corporate, and to vest in the society all property for the time being vested in any person or persons in trust for the society. See as to advancing money to members on the security of real or personal property, s. 40; and as to the discharge of mortgages on redemption s. 43, and Schedule III. Some of the clauses in the last Precedent and the notes thereto might be adapted to this Precedent. Probably the provisions as to mortgages of registered land to Building Societies (*ante*, p. 121) will be extended in practice to mortgages to Friendly, Industrial and Provident Societies.

Registered land.

(*b*) For copyholds, add, " B., C., & D., trees appted by & on behalf of the Socy (hinafter called the trees, wch expression shl include their hrs, exs, ads, & assns, where the context so admits)," 3.

at any time durg the continuce of this secy, become due or payable from the mtgor to the Socy under the rules of the Socy or orwise, AND WILL, durg the continuce of this secy, observe & pform all the rules of the Socy: [*Provon for whole ppal becomg due on default*, p. 122, *note*]: AND THIS INDRE FURTHER WITNETH, *convce of freehds or leasehds as in precedg Prec* (*c*); AND THIS INDRE FURTHER WITNETH that for the conson afsd the mtgor, **as benefl owner,** hby assns to the Socy, ALL THOSE —— shares held by the mtgor in the Socy, TO HOLD to the Socy, subjt to the provo for redmon hinafter contd: PROVD ALWAYS, & it is hby agrd that the sd premes shl be redeemable on paymt by the mtgor to the Socy of the sd sum of £—— & intt by the instalmts & in mner afsd, & of all fines, dues, & moys wch may at any time durg the continuce of this secy become due or payable from the mtgor to the Socy under the rules thof or orwise: [*for leasehds mtged by demise, add declon of trust of nominal revon & power of atty, &c.*, p. 30]: AND IT IS HBY agrd that in case the mtgor shl omit or neglect to keep the sd [freehd] premes insured from loss by fire or other casualties to the full value thof, or to produce to the Socy or to any of their officers on demand the poly of such insurce or the rect for the current yr's premium, or shl fail to keep the sd premes in good & tenantable repair & condon, the Socy may insure to the full value & repair & keep insured & repaired the same at the expse of the mtgor, to be repd to the Socy on demand with intt at —— p.c. p.a., & in the meantime to be a chge upon all the sd premes hby mtged: AND IT IS FURTHER agrd that the Socy may at any time hrafter witht any further consent on the pt of the mtgor enter into the posson or into the rect of the rents of the sd [freehd] premes & may, whether the Socy shl or shl not have entd into such posson or rect, appt at the cost & sole risk of the mtgor a pson to collect & rece such rents for the use & benefit of the Socy at such commission as the Socy shl think fit, & so that all the statutory provons resptg the apptmt of recers of ppty in mtge &

and observe rules.

Further witnesseth.

Assignment of shares in the Society.

To the Society.

Proviso for redemption.

Power to Society to insure.

To enter and to appoint a receiver.

(*c*) The variation for copyholds will be as at p. 123, note, modified so as to adapt it to the proviso for redemption in the present Precedent, which proviso may in that case be omitted, the shares being assigned "subjt to the like rt of redmon as is hinbfe provd in the case of the sd copyhd premes."

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the powers & duties of such recers & orwise in relon thto shl apply to this secy except so far as the same are hby varied & subjt to the provons hrin contd: AND ALSO may after enterg into posson as afsd grt any leases of the sd premes or any pt thof wch mtgees in posson are by the Convcg & Law of Ppty Act, 1881, authorised to grt, all the provons of wch Act in relon to leases as well by mtgors as by mtgees shl apply to this secy: AND ALSO may absolutely sell or dispose of all or any of the sd mtged premes at such time, in such mner & subjt to such condons, as the Socy in their discron may deem expedient, & may buy in or rescind or vary any contract for sale, & resell witht being responsible for loss occasd thby (*a*): PROVD ALWAYS that the Socy shl not exercise the power of enterg into posson or rect of rents & apptg a recer hinbfe contd unless & until default shl have been made for —— weekly meetgs, & shl not exercise the powers of leasg & sale hinbfe contd unless & until default shl have been made for —— weekly meetgs of the Socy, in the paymt of some instalmt or other moys wch shl have become due on this secy or in the observce or pformce of some of the rules of the Socy or of the covts hrin contd: BUT NO entry into posson, rect of rent, apptmt of a recer, lease, or sale, wch may be made in the exercise or intd exercise of any of the powers afsd, shl be impeachable by reason of any breach of the provon lastly hinbfe contd, or any other impropriety or irregularity, & no pchaser or lessee from or other pson dealg with the Socy shl be concerned to enquire whether this secy is subsistg or into the rt of the Socy to exercise any of the sd powers: AND IT IS HBY further decld that the Socy shl, out of the moys wch shl arise from any exercise of the powers hinbfe contd, in the first place dischge all the expscs incurred in or about the rect thof, or the exercise of the sd powers or orwise in respt of the premes, And in the next place apply such moys in or towards satisfon of the moys owing on this secy & shl pay the surplus (if any) to the mtgor as psonal este. *Mtgee's indemnity clause*, p. 59. [*Clause preservg rt of consolidon*, p. 59.] IN WITS, &c

To lease.

To sell.

Events in which powers are to be exercised.

Proviso in case of improper exercise of powers.

Trusts of monies received under powers.

[*Schdle of pcels.*]

(*a*) In the case of copyholds, add, "& the trees shl, if necy, concur with the Socy in the exercise of any of the powers hinbfe contd,

XXVI.

MORTGAGE *of* FREEHOLDS *for a* TERM (*b*) *to trustees to secure* PRESENT *Loan and* FUTURE ADVANCES, *under a* POWER *in a* SETTLEMENT *authorising the* TENANT *for* LIFE *to* CHARGE *a limited sum for his own benefit.*

Recitals. Settlement.

PARTIES, A., *mtgor*, 1; B., C., & D., *mtgees*, 2; WHAS by an indre, dated, &c., & made, &c., the hds hby mtged, were assured & limd to the use of the sd A. for his life with divers remrs over, & it was thby provd that it shd be lful for the sd A. at any time durg his life by deed to chge all or any pt or pts of the sd hds with the paymt of any sum or sums of moy not exceedg in the whole £5000, & intt thron at any rate not exceedg, &c., for his own absolute benefit, & to limit or appt any term or terms of yrs in the sd hds, or any pt or pts thof, to any pson or psons advancg such monies for securg the repaymt thof with intt as afsd, with such power of sale & other provons as might be thought pper: *Agrmt for loan of* £1000, p. 3, *addg after the word* "thof," *the words* "& also of every other sum or sums wch may hrafter be advced or pd by the sd B., C., & D., or the survors or survor of them, or the exs or ads of such survor, their or his assns, to or on acct of the sd A., his exs or ads, not exceedg togr with the sd sum of £1000 the ppal sum of £5000" (*c*): NOW THIS INDRE WITNETH

Witnesseth.

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for the ppose of givg legal effect thto in such mner as the Socy may require."

Mortgages of long terms.

(*b*) Compare Precedent X., of a mortgage in fee under a power. Formerly trustees were not at liberty, without express authority, to invest on mortgage of a long leasehold under a power to invest in "real securities" (see *Re Boyd*, 14 Ch. D. 626; *Leigh* v. *Leigh*, 35 W. R. 121); but by the T. A., 1893 (56 & 57 Vict. c. 53), s. 5, such a power authorises an investment on mortgage of property held for an unexpired term of not less than 200 years, and not subject to any reservation of rent greater than one shilling a year, or to any right of redemption, or to any condition for re-entry except for non-payment of rent.

Registered land.

Though the mortgage term cannot be registered as a lease, L. T. A., 1875, s. 11, L. T. A. 1897, sched., notice of it can be registered, L. T. A., 1875, s. 50. As to registered charges for future advances, see ante, p. 79.

Mortgage for further advances.

(*c*) This limit of amount of principal is mentioned as the power in the settlement requires it, otherwise it would not have been necessary, the security being good for any amount which the stamp is sufficient to cover; see the Stamp Act, 1891, s. 88; and as to equitable mortgages, see the schedule, MORTGAGE, (3). As to mortgages for further advances, see p. 79, note.

Covenant for payment.

that in psuance of the sd agrmt, *conson*, p. 9, *form* I., *covt by A. for paymt of ppal sum & future advces*, p. 10, *form* V., *& intt after default*, p. 10, *form* II. :

Further witnesseth.

AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd the sd A., **as benefl owner,** in exercise of the power for this ppose given to him by the hinbfe recited indre, & of every or any other power in this behalf him enablg, doth hby

Charge of parcels with payment.

chge, *pcels, Vol. I.*, p. 385 *et seq.*, With the paymt to the sd B., C., & D., their exs, ads, & assns, of the sd sum of £1000, & every other sum wch may be advced or pd as afsd, & the intt for the same resply at the rate afsd on the respive days hinbfe appted for paymt thof resply :

Further witnesseth.

AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & for the conson afsd, the sd A., **as benefl owner,** in exercise of the power for this ppose given to him by the hinbfe recited indre, & of every or any other power in this behalf him

Appointment.

To use of mortgagees for term.

enablg, doth hby limit & appt, All the —— & hds & all other the premes hinbfe chged, To the use of the sd B., C., & D., for the term of 500 yrs from the day next bfe the date of these psnts, subjt to the provo for redmon hinafter contd :

Proviso for redemption.

Provo for redmon, p. 18, *form* XI., *on paymt by*, "the sd A., his hrs, exs, ads, or assns, or any pson or psons intted in the equity of redmon of the sd premes hby mtged," *saying*, "then & in such case the sd term of 500 yrs hby created shl forthwith cease & determine ;" *Jt acct clause with the variation in note (f)*, p. 37 ; *Covt to insure & repair*, p. 42, *or covt supplemental to statutory power of insce*, p. 45, *if appropriate* (*a*) ; *Covt agst registron*, p. 50, *form* XXXVI. ; *Mtgee's indemnity clause*, p. 59 :

Power of sale.

Proviso as to primary liability to debt.

Provd always, & it is hby agrd, that as betn the sd A., his hrs, exs, & ads, & the sd mtged premes, the sd mtged premes shl be primarily liable to the paymt of the moys hby secd ; *Provo that mtgees are not to be affected by foregoing declon*, p. 37, *form* XIX. ; *Clause as to devolon of mtgee's powers*, p. 61 ; *Acknmt & undertakg as to munimts*, p. 60 (*b*). In wits, &c.

(*a*) If the settlement authorises a power of sale to be given (which it would do although silent, see *Bridges* v. *Longman*, 24 Beav. 27, *Re Chawner*, 8 Eq. 569), it would be implied by the C. A., 1881, s. 19.

(*b*) The statutory acknowledgment is proper, as the tenant for life is the rightful custodian of the deeds ; as to equitable tenants for life, see *Re Burnaby*, 42 Ch. D. 621 ; *West* v. *Wythes*, [1893] 2 Ch. 369 ; *Re Newen*, [1894] 2 Ch. 297.

XXVII.

MORTGAGE *of a* TERM *to secure* PORTIONS *and the* COSTS *of raising them, where neither the* PORTIONISTS *nor the* FREEHOLDER *concur.* VARIATIONS *where the* PORTIONISTS *or the* FREEHOLDER *concur* (*c*).

PARTIES, A. & B., *trees of the mtge term*, 1; M., *mtgee*, 2. *Recite the settlemt down to & includg the limon of the term to A. & B. & the trusts of term, except the trusts for mtce & advancemt:* AND WHAS the sd K., *tenant for life*, died on the —— day of ——, havg had, besides some chln who died in his lifetime witht havg acquired a vested intt in the sum secd for portions as afsd, an eldest son, C., & four yor chln, viz., D., who has attned the age of 21 yrs, & E., F. & G., who are infants: AND WHAS in the events that have happened D. is absolutely entled to the sum of £——, pt of the moys secd for portions as afsd, & may become entled to a further sum: AND WHAS the sd A. & B. have determined to raise now the sum of £—— [being the maximum sum that can be required for portions as afsd (*d*)]: AND WHAS the costs incurred by the sd A. & B. in & about the negotion of & the preparon & exon of these psnts amt to £—— (*e*), makg with the sd sum of £—— the sum of £——;

(*c*) Where the portionists concur they will be parties of the 2nd part, the recital will state that the trustees have with their concurrence agreed to borrow the money, and in the operative part the mortgage money will be stated to be paid with their consent to the trustees. Where the freeholder concurs he will be made a party of the 2nd, or, if the portionists are parties, of the 3rd part. The recitals will shew his title and his agreement to concur. If he is seised in fee simple or in tail he will generally covenant for payment, and his covenants will be placed in the first witnessing clause. In the conveyance he will, "**as benefl owner,** convey & confirm." The charge of interest after default will be omitted. If he is tenant for life only the recitals will be the same as if he were seised in fee, he will not covenant to pay principal, but will covenant to pay interest during his life, p. 10, and such covenant will be inserted immediately after the charge of interest after default. If he gives statutory covenants for title his liability should be restricted as at Vol. I., p. 419, form II. or III. Notice of this deed should be registered if the land is registered. See p. 129, note.

(*d*) The whole sum that can be required may be raised by one mortgage notwithstanding that some of the portionists are infants or only contingently entitled. *Gillibrand* v. *Goold*, 5 Sim. 149; *Leech* v. *Leech*, 2 Dr. & War. 568.

(*e*) The trustees can, without special authority, mortgage the term for costs, *Armstrong* v. *Armstrong*, L. R. 18 Eq. 541.

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Agrmt for loan, p. 1; NOW THIS INDRE, &c., *conson, & rect*, p. 9, they the sd A. & B. **as trees**, in exon of the trusts of the sd term, hby assn unto the sd M. *pcels, habendum*, p. 14; *Provo for redmon on paymt by* "any pson or psons for the time being intted in the equity of redmon of the hds hby assned," *specifyg the rate of intt*, p. 19, *form* XVI.; *or if the whole sum that can be required is not raised, for re-assnmt to the trees*, p. 17, *form* II.: PROVD ALSO, & the sd A. & B. **as trees**, in further exon of the trusts of the sd term hby chge, *continue chge of intt after default*, p. 31; *Provo excludg liability of trees*, p. 38; *Mtgee's indemnity clause*, p. 59.

XXVIII.

PREC. XXVIII.

MORTGAGE *of an* UNDIVIDED MOIETY *of* FREEHOLDS *to secure the re-transfer of* STOCK, *and for payment in the meantime of* SUMS *equal to the* DIVIDENDS. POWER *of* PARTITION. VARIATIONS *where* INTEREST *on the* SUM *which would be produced by* SALE *of the* STOCK *is payable till* RE-TRANSFER, *and for a* MORTGAGE *to* TRUSTEES (*a*).

Recitals. Seisin of mortgagor. Agreement.

PARTIES, A., *mtgor*, 1; B., [C. & D.], *mtgee*[*s*], 2; WHAS under & by virtue of an indre dated, &c., & made, &c., the sd A. is seised of the one undivided moiety hinafter mtged, of the hds hinafter descd & the inhance thof for an este in fee simple in posson: AND WHAS it has been agrd that the sd B., [C. & D.,] shl sell the sum of £——, 2¾ p.c. Consold Stk to wch he is entled, [they are entled on a jt acct,] & pay the produce thof to the sd A., upon the terms of havg the re-pchase in his name [their names] of the sd sum of £—— stk, togr with the paymt in the meantime of sums of moy eql to the divds thron (*b*) [of

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(*a*) Trustees may not invest on a stock mortgage under the ordinary powers of varying securities, *Whitney* v. *Smith*, L. R. 4 Ch. 513. As to the stamp, see the Stamp Act, 1891, ss. 6, 87 (1). For the variations where the land is registered, see Prec. I. p. 67.

Registered land.

(*b*) As regards stock mortgages prior to the National Debt (Conversion) Act, 1888 (51 Vict. c. 2), an agreement to pay half-yearly sums equal to the dividends on the old 3 per cent. Annuities, is satisfied by the payment of intt in the meantime on such produce at the rate hinafter mentd] secd in mner hinafter appearg; NOW THIS INDRE WITNETH, that in conson of the sd B., [C. & D.,] havg sold the sd sum of £—— stk, & havg this day pd the sum of £—— sterling, the net sum produced by such sale, unto the sd A., *rect, covt by A. to re-transfer stk, & in the meantime to pay sums eql to the divds* [*or to pay intt on the sum of* £——], p. 11; *& to pay sums eql to divds* [*or intt qtrly*] *after default*, p. 11; *Second testatum as in Prec. I.*, p. 68, *grt by A.* **as benefl owner** (*c*) *of*, "ALL THAT one undivided moiety of & in," *pcels, see Vol. I.*, p. 385 *et seq.*; *habendum*, p. 14 (*d*); *Provo for redmon*, p. 18, *form* VIII.; [*Declon*, p. 37, *by B., C., & D., that*, "the sd sum of £—— stk so sold by them as afsd & the produce of the sale thof belonged to them on a jt acct";] *Covt to insure & repair, if appropriate*, p. 42, *form* XXIX., *or* p. 45, *form* XXX.; AND it is hby agrd that the powers of sale & apptg recers conferred by statute on mtgees, & the provons subsidiary or incidental to such respive powers, shl apply to this secy with the modificons rendered necy by reason of these psnts being a secy for the transfer of stk in lieu of the paymt of moy; *Power to mtgee to concur with co-owners in exercisg powers*, p. 57, *form* XLII. (*f*); *Power of parton*, p. 58; *Covt agst registron*, p. 50, *form* XXXVI.; "of the hds an undivided moiety of wch is hby mtged"; *Mtgee's indemnity clause*, p. 59; [*Clause as to devolon of powers of mtgees*, p. 61.] IN WITS, &c.

Witnesseth.

Covenant to re-transfer stock and pay interest.

Further witnesseth.

Grant.

Declaration that stock belongs to mortgagees on joint account (*e*).

Clause incorporating statutory powers of sale, and appointing receivers in stock mortgage.

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quarterly sums equal to the dividends on the same amount of new stock created by that Act (s. 21).

(*c*) See p. 62, note. The covenant for quiet enjoyment which this implies, under the C. A., 1881, s. 7 (C.) is on default "in payment of the money" secured, which is not quite appropriate to a stock mortgage, but the point is of no importance. If express covenants were inserted the covenant would be "if default shl be made in the transfer of the sd sum of £—— stk, or in paymt of any moys hby secd."

(*d*) In subsequent clauses insert the word "moiety," before "hds."

(*e*) The C. A., 1881, s. 61, above, p. 37, note, applies to a mortgage for securing "money or money's worth," and therefore to a stock mortgage.

(*f*) If the powers of leasing in the C. A., 1881, s. 18, are intended to operate, it would be proper, as the mortgage is of an undivided share, to provide that the provision (sub-s. 11) requiring that counterparts of leases executed by the mortgagor shall be delivered to the mortgagee shall not apply in the case of leases of the entirety unless and until such counterparts shall come into the possession or power of the former.

PREC. XXIX.

XXIX.

MORTGAGE *of a* BUILDING LEASE (*a*) *to a* MARRIED WOMAN *as a* FEME SOLE *under the* MARRIED WOMEN'S PROPERTY ACT, 1882 (*b*), *the mortgage* MONEY *to be* ADVANCED *by* INSTALMENTS *as wanted, and the* LOAN *to be continued for a* TERM CERTAIN. POWER *to* MORTGAGEE *to complete* BUILDINGS *on* MORTGAGOR'S DEFAULT, &c. VARIATIONS *where the* HUSBAND *of the* MORTGAGEE *is a* PARTY.

Parties, A., *mtgor*, 1; B., the wife of C., of, &c., *mtgee*, 2; [the sd C., 3]: *Recite lease from* K. *to* A. *formally, see Vol. I.*, p. 364, *settg out the covt to build:* AND WHAS in psuance of the sd recited covt, the sd A. has commenced the eron of bldgs on the pce of land demised by the sd indre of lease: AND WHAS the sd A. has reqted the sd B. to lend him the sum of £—— for the ppose of enablg him to complete the sd bldgs, wch the sd B. has agrd to do out of moys belongg to her as her septe ppty independently of her sd husbd, upon havg the repaymt of the same with intt secd in mner hinafter appearg: AND WHAS upon the treaty for the sd loan, it was agrd that the sum of £——, pt of the sd sum of £——, shd be advced to the sd A. by the sd B. on the exon of these psnts, & that the residue of the sd sum of £—— shd be adveed by the sd B. (*c*) to the sd A. (*c*), by instalmts & in mner & on the condons provd by the covt of the sd B. hinafter contd: NOW THIS INDRE WITNETH that in conson of the sum of £——, now pd to the sd A. by the sd B., the rect, &c., & of the covt of the sd B. hinafter contd for the loan to the sd A. of the further sum of £—— by the instalmts & on the condons hinafter mentd,

Recitals.

Commencement of buildings.

Agreement for loan.

Loan to be by instalments.

Witnesseth.

(*a*) As to the danger of a merely equitable mortgage of a building lease, see *Union Bank, &c.*, v. *Kent*, 39 Ch. D. 238. For registered leaseholds, see Prec. V., p. 75, and see note, p. 79.

M. W. P. A., 1882.

(*b*) See p. 87, note, and p. 89, note. The mortgage-money being the wife's separate estate, the mortgage may be made to her as a *feme sole*, whether she was married before or since the M. W. P. A., 1882, came into operation, under the 2nd or 5th section of the Act, and she may sue on the covenants (s. 1 (2)), and convey the estate and exercise the powers as a *feme sole*. It would, nevertheless, be desirable that the husband should be a party to acknowledge that the money is the wife's separate estate, to preclude questions as to this in future dealings; and the variations where he joins in the deed are therefore given.

(*c*) As to the addition of the words, "exs or ads," see *ante*, p. 4, notes (*b*), (*c*), and p. 35, note (*d*).

Covenant for payment.

Further witnesseth.

Demise.

Loan to be continued for term certain.

Covenant by mortgagor to execute works.

Power for mortgagee to enter and execute works.

Sums expended to be a charge on premises.

Covt by A. with B. for paymt of psnt & future advces, p. 10; *& intt after default*, p. 10; *Further testatum, demise of premes comprd in lease to B., as in Prec. V.*, p. 76, "TOGR WITH all bldgs & erons wch now are, or wch shl at any time durg the term hby grted, be erected & standg on the sd pce of land & premes," *for the term of the lease except the last day, subjt to redmon; Provo for redmon*, p. 17; *Declaron of trust of nominal revon, &c.*, p. 30; *Covt by B. with A. to make advces up to the agrd limit for the complon of the bldgs*, p. 35, *form* XIV.; *Provo for continuce of loan for a term certn*, p. 33, *addg the words*, "& provd none of the events shl happen in wch the obligon of the sd B. [her exs, ads, or assns], to make or continue the sd advces is to cease as hinbfe mentd," *or specify these events at length;* AND THE sd A. hby covts with the sd B., that he the sd A., his exs, ads, or assns, will proceed with & continue the eron of the sd bldgs & the exon of the sd works in a pper mner & with due diligce in accdce with the sd recited covt, & in order that the same may be completed within the time provd by the sd covt: AND THAT in case the sd A., his exs, ads, or assns, shl make default in any such respt or shl in the judgmt of the sd B., her exs, ads, or assns, have made such default, or in case the sd A., his exs, ads, or assns, shl become bkpt, or shl have a receivg order made agst him or them, or shl make or enter into any arrangemt or composon with his or their credors, then & in any such case it shl be lful for the sd B., her exs, ads, or assns, to enter upon the sd premes hby mtged, & to continue & complete the sd erons, bldgs, & works, eir by contract or by engagg workmen & providg (*d*) materials & plant, & genlly in such mner as she or they may think pper, witht liability to acct as mtgee in posson: AND THAT in such case, all sums of moy wch she or they shl expend thron, with intt after the rate afsd from the time or respive times of expendg the same, shl be repd to her or them by the sd A., his exs, ads, or assns, on demand, & until repaymt shl be chged on the sd mtged premes; *Covt by A. with B. to insure & repair*, p. 42, *form* XXIX., *or* p. 45, *form* XXX.; *Covt agst registron*, p. 50, *form* XXXVI.; [*Power to sell leasehds in lots by way of underlease*, p. 29, *form* XIV.]; *Mtgee's indemnity clause*, p. 59; *Clause preservg rt of consolidon*, p. 59: PROVD

(*d*) A power to seize the materials and plant would be void under the Bill of Sale Act, 1878, s. 7. See p. 151.

PREC. XXIX.

Proviso that mortgage money and security is to be the wife's separate property.

ALWAYS & it is hby decld [& the sd C. doth hby admit] that all the moys advced & to be advced by the sd B. to the sd A. as afsd are & will be moys belongg to the sd B. as her septe ppty independently of the sd C., & accdly that all the moys hby secd & the secy hby effected for the same, & all powers & remedies hrunder, are & shl be the septe ppty of the sd B. independently of the sd C. IN WITS, &c.

XXX.

PREC. XXX.

MORTGAGE *of a* LEASEHOLD PUBLIC HOUSE *to a* FIRM *of brewers. A concise form* (*a*).

PARTIES, A., *mtgor*, "hinafter called the mtgor, wch expression shl include his exs, ads, & permitted assns, where the context so admits," 1; B., C., & D., "tradg as co-ptnrs under the firm of & hinafter called B. & Co, wch expression shl include the survors & survor of them & the exors or ads of such survor, their or his assns where the context so admits," 2; *Recite lease, Vol. I.*, p. 364 [*& devolon of title to A., Vol. I.*, p. 366]. *Agrmt for loan & future advances*, p. 4, *form* IV.; NOW THIS INDRE WITNETH, *conson*, p. 9, *rect.* p. 9, *covt by A.* on demand to pay to B. & Co the sum of £—— with intt thron until paymt at the rate of —— p.c. p.a. from the date of these psnts & also every other sum of moy wch may be lent to the mtgor by or may become owing from him except for intt to B. & Co with intt thron until paymt at the rate afsd from the time of the same being lent or becomg due, AND ALSO until such demand shl be made to pay to B. & Co (in pt paymt of the sd moys) intt at the rate afsd by equal half-yearly paymts on the —— day of —— & —— day of —— in every yr on the ppal moys for the time being due on this secy: AND THIS INDRE ALSO WITNETH, *demise of* "all & singular the premes comprd in or demised by the sd indre of lease togr with the goodwill of the trade carried on thron, & the benefit of the licenses for carryg on the trade of a victualler & beer retailer on the sd premes, *habendum for the term grted by lease except the last day thof subjt to provo for redmon.* PROVD ALWAYS & it is hby agrd that if the mtgor shl on demand made or left on the premes hby demised or witht such demand pay to

Covenant to pay principal and interest on demand.

Demise of leaseholds.

Proviso for redemption.

Registered leaseholds.

(*a*) Where the lessee is registered as proprietor, see Prec. V., p. 75.

B. & Co all moys hby covtd to be pd by the mtgor, then B. & Co shl at the expse & costs of the mtgor surrender the premes hby mtged. *Declon of trust of nominal revon, power of atty, & power to appt new trees*, p. 30. And the mtgor hby covts with B. & Co that during the continuce of the secy: *first*, he will observe & pform all the covts by the lessee & condons contd in the sd indre of lease: *secondly*, he will keep the tenants fixtures, trade fittings, and stock-in-trade on the mtged premes insured agst loss or damage by fire in the full value thof in the name & to the satisfon of B. & Co: *thirdly*, he will keep the sd tenants fixtures & fittings in good repair, and will not remove the same witht the license in writing of B. & Co: *fourthly*, he will reside in the house hby mtged & psonally carry on the trade of a licensed victualler & beerhouse keeper thron; *fifthly*, he will obtain annly, or oftener if necy, the licenses for carryg on the sd trade; *sixthly*, no endorsemt shl be made on eir of the sd licenses & that the renewal thof shl not be refused; *seventhly*, he will insure & keep insured agst loss, forfeiture or endorsemt the existg licenses & any renewed or future licenses in the sum of £—— in the name of B. & Co in some office to be approved by them; *eighthly*, he will on demand produce to B. & Co the pols for the insces to be effected psuant to the covts hinbfe contd, and the receipt for every paymt of the prems thron, and that in the absence of such production B. & Co shl be entled to assume any pol or pols so required to be produced and not produced has or have not been effected & to act accdly; *ninthly*, he will not assn, demise or pt with the posson of the sd public house witht the license in writg of B. & Co; *tenthly*, he will on the reqt of B. & Co deliver posson of the mtged premes to any lessee, lessees, pchaser or pchasers thof from B. & Co, & will endorse & transfer the sd licenses to such lessee, lessees, pchaser or pchasers & will sign & give all notices required to effect the legal transfer of such licenses or for obtaing new licenses to such lessee, lessees, pchaser or pchasers as the case may require, & will if required by B. & Co withdraw from the books of the excise the name of the mtgor as carryg on trade on the sd public house. AND the mtgor doth hby irrevocably appt K., L., & M. all of the —— Brewery, coopers to B. & Co, & each & every of them to be the attys & atty of the mtgor in his name to give & sign all notices & do & exte all acts, instrumts & things necy or expedient for obtaing or

Covenants by mortgagor.

transferrg the sd licenses in mner afsd, & for withdrawg from the books of the excise the entry of the mtgor as carryg on trade on the sd public house; *eleventhly,* the mtgor will *deal with B. & Co only,* Vol. I., p. 751 (*a*). AND IT IS HBY AGRD (1) that it shl be lful but not incumbent for B. & Co to pay on behalf of the mtgor all moys wch at any time while any moy remains due on this secy shl be payable by the lessee under the covts contd in the sd indre of lease & all rates, taxes, duties, outgoings, or assessmts (*b*) imposed on the mtged premes or on the owner or occupier in respt thof and all moys wch may be payable for the insces & licenses hinbfe covtd to be obtained; (2) that all moys pd by B. & Co under the provon lastly hinbfe contd shl be deemed to be moy lent to the mtgor by B. & Co as on the date of the same being pd by B. & Co; (3) that it shl be lful for B. & Co, whether having taken posson or not, to demise the premes hby mtged, with or witht the benefit of the sd licenses, for any term not exceedg the residue for the time being unexpired of the term granted by the sd indre of lease, *continue power to lease,* p. 49; (4) *Provo that mtge moy shl be deemed to become due on a specified day for the ppose of a sale,* p. 28; (5) that any sale of the mtged premes made by B. & Co may be made eir by assignmt or by underlease & eir subjt to or free from any underlease or incumbrce not binding B. & Co; (6) that all moys wch shl be reced by B. & Co in respt of any poly hby covtd to be effected shl be applied *first* in paymt of the costs incurred by B. & Co under these psnts, secondly in or towards paymt of the moys for the time due to B. & Co on this secy & subjt thto shl be held in trust for the mtgor, *attornmt clause,* p. 50, *Covt agst registron,* p. 50, *form* XXXVI.; *Mtgee's indemnity clause,* p. 59.

Receipt clause.

PROVO THAT all moys becomg due on this secy shl be deemed to belong to B. & Co as part of their ptnp ppty & accdly that the rect of any pson entld to give rects on behalf of B. & Co for any ppal moys or intt hby secd or for any moys arisg from a sale of the mtged premes or any pt thof shl effectually dischge the pson paying the same. IN WITS, &c.

Fettering equity of redemption.

(*a*) This covenant being restricted to the continuance of the security does not clog the equity of redemption, and is valid, ***Biggs*** v. ***Hoddinott***, [1898] 2 Ch. 307. On the general doctrine against a mortgagee stipulating for a collateral benefit and so fettering the right to redemption, see ***James*** v. ***Kerr***, 40 Ch. D. 449; ***Mainland*** v. ***Upjohn***, 41 Ch. D. 126; ***Marquess of Northampton*** v. ***Pollock***, 45 Ch. D. 190, affirmed in D. P. ***sub nom. Salt*** v. ***Marquess of Northampton***, [1892] A. C. 1; 2 W. & T., L. C. Eq., notes to ***Howard*** v. ***Harris***.

(*b*) See ante, Vol. I., pp. 682, 683.

XXXI.

MORTGAGE *of* FREEHOLDS *by* EXECUTORS (*c*).

PREC. XXXI.

Parties, A. & B., *exs*, 1; C., *mtgee*, 2. *Recite will, apptmt of exors, death probate & seisin of testor, see* Vol. I., pp. 366, 367, 374, 375. AND WHAS the sd C. has agrd with the sd A. & B. to lend them the sum of £——, wch is required by them for the ppose of paying the debts of the sd testor upon havg &c. NOW THIS INDRE WITNETH that in psuance, &c., & *conson & rect*, the sd A. & B. **as psonal repves of the sd X. decd,** *continue convce*, p. 14, *provo for redmon*, on paymt by any pson or psons interested in the equity of redmon of the sd premes hby assured, p. 16. *Charge of intt after default*, p. 31, *form* III. *Exs not to be psonally liable*, p. 38. *Covt agst registron*, p. 50, *form* XXXVI. *Mtgee's indemnity clause*, p. 59.

XXXII.

MORTGAGE *by* EXECUTOR *to raise* ESTATE DUTY *paid by* HIM *on real Estate to which an* INFANT *has succeeded with the* CONSENT *of the* GUARDIANS (*d*).

PREC. XXXII.

Parties, A., *exor*, 1; B. & C., *guardians of K. an infant*, 2; D., *mtgee*, 3. *Recitals showing the will of X. apptg A. his*

(*c*) An executor has power to mortgage leaseholds for the purpose of paying the testator's debts, *Mead* v. *Orrery*, 3 Atk. 239; *Scott* v. *Tyler*, 2 Dick. 725; and the power is extended by the L. T. A., 1897, s. 2, to the freeholds of a testator dying after 1897.

Payment of estate duty by executors.

(*d*) The executors or administrators may pay the estate and settlement estate duty on any property passing on the death of the deceased which is not under their control if the persons accountable for the duty request them to make such payment, Finance Act, 1894, s. 6 (2). Every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management of it at any time vested is accountable, s. 8 (4); any person authorised or required to pay the duty has power to raise the amount, with interest and expenses, by sale or mortgage or terminable charge on the property or any part thereof, s. 9 (5). Duty paid by an executor or administrator in respect of property not under his control is to be repaid to him by the trustees or owners of the property, but if it is in respect of real property it may, unless otherwise agreed upon, be repaid by instalments, s. 9 (4), as provided in s. 6 (8). See *Re Gray*, [1896] 1 Ch. 620.

As to payment of estate duty by the executors, see pp. 683, 697. Settlement estate duty is payable out of the property subject thereto, F. A., 1896, s. 19 (1).

PREC. XXXII.

exor, death, probate, that on his death the "hds hby mtged" *of wch X. was tenant for life under a settlemt passed to K. (an infant), that B. & C. are his guardians.* AND WHAS the sd A. at the reqt of the sd B. & C. pd on the —— day of —— out of moys formg pt of the este of the sd X. to the Commrs of Inland Revenue the sum of £—— for the este duty [& settlemt este duty] which became payable on the death of the sd X. in respt of the sd hds & the intt thron till paymt, & has incurred expses in respt of the premes & of these psnts amountg to £—— makg with the sd sum of £—— the sum of £——. AND WHAS the sd sum of £—— remains due to the sd A. as such exor as afsd but all intt thron has been pd up to the date of these psnts. *Agrmt for loan,* p. 1. NOW THIS INDRE WITNETH that in psuance, &c., *conson rect,* the sd A. **as psonal repve of X. deced,** in exercise of the power conferred on him by the statute in this behalf, & with the appron of the sd B. & C., doth hby grt *pcels, habendum to D. in fee,* p. 14, *provo for redmon,* p. 16, *form* I., *specifyg rate of intt to be reserved to K., or if settled,* p. 18, *form* XI. *Charge of intt after default,* p. 31; *exor not to be psonally liable,* p. 38. *Mtgee's indemnity clause,* p. 59.

XXXIII.

PREC. XXXIII.

MORTGAGE *of the land of a* LUNATIC *under the Lunacy Act,* 1890, *s.* 118 (*a*).

PARTIES, A. *lunatic,* "a pson of unsound mind actg by B. of &c., the duly appted committee of his este," *in case of lunatic*

If settlement estate duty is paid in respect of a contingent interest, which in the event cannot arise, it is to be repaid, F. A., 1898, s. 14.

Effect of L. T. A. 1897.

The rights and duties as to the payment of estate duty by the personal representatives of a deceased in respect of his fee simple property appear not to be affected by the L. T. A., 1897, see s. 5. But as they have a statutory power of sale conferred on them by the Act, s. 2, it is apprehended that at any time before they have assented to a devise or conveyed the property to the beneficiaries they can sell the property free from duty. Possibly if these views are correct some difficulty may arise in delivering the account which ought, F. A., 1894, s. 6 (4), to be delivered by the person accountable within six months of the death, *i.e.*, before the time when the personal representatives are bound to assent or convey.

(*a*) The lunatic will be authorised to covenant for title, *Re Ray,* [1896] PREC. XXXIII.

not so found by inquon, say, "a pson of unsound mind not so found by inquon actg by B. of ——, the pson appted to exercise the powers of a committee of his este," 1; C., *mtgee,* 2. *Usual recitals as to title, order authorizg B. to exte mtge to C. on the latter paying £—— into ct, approval of these psents as "a ppr mtge" & of paymt of £—— into ct by C.,* see Vol. I., p. 576. NOW THIS INDRE WITNETH that in psuance of the sd agrmt & order & for the conson afsd the sd A., actg by the sd B. as afsd **as benefl owner,** *continue convce & provo for redmon in the ordinary form,* pp. 14, 16. And the sd A. actg by the sd B. as afsd **as benefl owner** doth also chge the hds hby grted with intt at the rate afsd payable to the sd C. by eql half-yrly paymts on the —— day of —— & —— day of —— in every yr on the ppal moys for the time being due on this secy. Provd always & it is hby agrd & decld that so long as the intt payable in respt of the sd ppal moy hby secd shl be pd on the days on wch the same shl become payable or within —— days after the same shl become payable & the sd A. shl live, the sd C., his exs, ads, or assns, shl have no rt or power to sell or foreclose the hds hby grted or orwise to realize this secy or require or enforce paymt of the ppal moys hby secd; *Mtgee's indemnity clause,* p. 59. In wits, &c.

XXXIV.

MORTGAGE *of* Charity Estates (*b*), *the advance being made by* Monthly Instalments.

PREC. XXXIV.

Parties, Governors of Charity (hinafter called the mtgors), 1; *Mtgees* (hinafter called the mtgees, wch expression, &c., *see* p. 61), 2. *Recite order of Charity Commrs sanctiong the raisg of a sum not exceedg £——, for bldg pposes at a rate of intt not exceedg —— on a mtge, witht power of sale, of a sufft pt of the freehd ppties of the Charity* [other than the School

Recitals.

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1 Ch. 468, but will not as a rule be authorised to covenant for payment, *Re Fox,* 33 Ch. D. 47, though the Court has jurisdiction to authorise such a covenant, see *Re Ray,* ubi sup.

(*b*) See 16 & 17 Vict. c. 137, s. 21, as modified by 18 & 19 Vict. c. 124, s. 30; and s. 29 of the last Act, and extended by 23 & 24 Vict. c. 136, s. 15.

PREC. XXXIV.

Bldgs & the site thof] *with provons for repaymt of the ppal by yrly instalmts within thirty yrs, & for raisg a sinkg or accumulon fund for that ppose.*

Agreement for loan.

AND WHAS upon the applicon of the mtgors in order to enable them to complete the eron of the sd bldgs, the mtgees have agrd to lend to the mtgors out of moys belongg to them on a jt acct the sum of £—— by monthly instalmts, as the mtgors may require the same, upon the terms that the sd loan shl bear intt at the rate of —— p.c. p.a. payable half-yrly, & shl be repayable within the period & by the instalmts hinafter mentd, & that the repaymt thof with intt shl be secd by the means & in mner hinafter expd:

Witnesseth.

NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of the premes the mtgors, by virtue of the sd authority in this behalf conferred upon them by the sd order of the Charity Commrs, and of every other power in this behalf them enablg, do hby covt with the mtgees that the mtgors upon or bfe the expiron of six calr months from the rect by them or the treasurer for the time being of the sd charity on their behalf of a notice in writg by the mtgees requirg paymt thof, will repay to the mtgees every sum of moy wch in psuance of the sd recited agrmt in that behalf shl hrafter be advced or pd by the mtgees to or on acct of the mtgors, togr with intt thron resply after the rate of —— p.c. p.a. from the time or respive times of the same resply being so advced or pd, & will likewise in the meantime, & until repaymt as afsd, & in pt paymt of the sd intt, pay to the mtgees half-yrly on every —— day of —— & —— day of ——, intt at the rate of —— p.c. p.a. computed to such half-yrly days resply upon the aggregate amt of the moys wch for the time being shl have been so advced & pd as afsd; *Further testatum, convce of mtged ppty:* PROVD ALWAYS, & it is hby agrd & decld, that if the mtgors shl, in accordce with their covt in that behalf hinbfe contd, repay to the mtgees all such sums of moy as may hrafter be advced or pd to them as afsd by the mtgees, with intt on the same at the rate afsd from the time or respive times of the same sums resply being so advced or pd, then the mtgees shl at any time hrafter, upon the reqt & at the cost of the mtgors, reconvey the sd hds & premes hinbfe grted unto & to the use of the mtgors, or as they shl direct: AND it is hby agrd & decld that the ppal moys & intt hby secd shl be a first

Covenant to pay principal and interest on notice,

and interest in the meantime.

Further witnesseth.

Conveyance of mortgaged property.

Proviso for redemption.

Proviso as to liability of trustees.

Money not to be called in during term if instalments of principal and interest duly paid.

Provision for earlier payment.

Power of sale excluded.

chge upon as well the hds hby conveyed as on all the income of the ppty now or at any time hinafter to be held by or in trust for the charity : PROVD ALSO & it is hby agrd & decld that the mtgors or any or either of them, shl not be liable in damages for or in respt of any breach or non-observce of the covts by the mtgors hrin contd wch shl happen after they or he resply shl have ceased to be governors or a governor of the sd charity, & that the damages recoverable in respt of any such breach or non-observce shl not exceed the amt of the income of the charity wch shl come into their or his hands after any such breach or non-observce : PROVD ALWAYS, & the mtgees do hby covt with the mtgors, that if the mtgors shl repay to the mtgees the aggregate amt of all such sums of moy as may hrafter be advced or pd by them or him as afsd to the mtgees by eql annl instalmts to be pd within thirty yrs from the day of the date of these psnts, the first of such annl instalmts to be pd on or bfe the —— day of ——, & shl likewise in the meantime pay to the mtgees, upon each of the half-yrly days hinbfe in that behalf appted, or within thirty days next after each of the sd half-yrly days resply, intt at the rate afsd up to such half-yrly days resply upon the aggregate amt for the time being of the sums so advced or pd as afsd, & then remaing owing upon the secy of these psnts, then the mtgees will not, bfe the expiron of the sd period of thirty yrs from the day of the date of these psnts, call in or enforce paymt of the sd sums so to be advced or pd as afsd, or any pt thof: PROVD ALSO & it is hby agrd & decld that if & so often as the mtgors shl be desirous of paying off all & every or any sum or sums of moy for the time being owing on the secy of these psnts at any time earlier than that at wch the same wd become payable by virtue of the provo last afsd, & shl for that ppose procure a pper order from the sd Charity Commrs, they the mtgors shl be at liberty so to do upon givg one calr month's previous notice in writg of their intention so to do to the mtgees : PROVD ALWAYS & it is hby exply agrd & decld that nothing hrin contd shl exply or by implicon empower the mtgees to sell all or any pt of the mtged hds or premes comprd in this secy, of wch the equity of redmon shl not have been first foreclosed, but this provon is witht prejudice to the rt of the mtgees to institute & prosecute any pcds wch they may

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be advised & desire to adopt for the foreclosure of the equity of redmon of the hds hby assured in default of due paymt accdg to the true intent & meang of these psnts, of the ppal moys & intt hby secd, or any pt thof: PROVD ALSO & it is hby agrd & decld that none of the powers or incidents by the Convcg & Law of Ppty Act, 1881, conferred on or annexed to the este of a mtgee (other than & except the power to appt or obtain the apptmt of a recr of the rents & profits of the mtged premes & to insure agst fire) shl take effect or be exercisable in respt of the premes hby mtged or any pt thof, or of the mtge hby created. IN WITS, &c.

Other powers in C. A., 1881, excluded except power to appoint receiver and insure.

XXXV.

PREC. XXXV.

MORTGAGE *by* TENANTS *in* COMMON *of freeholds subject to a Fee Farm* RENT. EXTENSION *of* STATUTORY *power of* SALE.

Recitals.

Seisin subject to rent-charges.

PARTIES, A. & B., *mtgors*, 1; C., *mtgee*, 2: WHAS the sd A. & B. are seised of the hds hby mtged as tenants in common in fee simple in posson in eql shares, subjt as to such of the same hds as are first hinafter descd to the paymt of a fee farm rent or perpetual yrly rent-chge of £——, issuing & payable throut under an indre dated, &c., & made, &c., & to the observce & pformce of the covts thrin contd & on the pt of the sd A. & B., their [respive] hrs & assns, to be observed & pformed, but free from any other chge or incumbce; *Agrmt for loan*, p. 1: NOW THIS INDRE WITNETH, that in psuance of the recited agrmt & in conson of the sum of £—— now paid by the sd C. to the sd A. & B. (the rect whof they do hby resply acknowe), *jt & sevl covts by A. & B. for paymt of ppal & intt after default*, pp. 9 & 10: AND THIS INDRE ALSO WITNETH, that for the conson afsd the sd A. & B., **as benefl owners**, do & each of them doth hby grt unto the sd C., *Pcels in two pts, see Vol. I.*, p. 385: TO HOLD the same UNTO & TO THE USE of the sd C., his hrs & assns, subjt as to the premes first hinbfe descd to the paymt of the sd perpetual yrly rent-chge of £——, limd or secd by the sd indre of, &c., & to the observce & pformce of the covts in the sd indre contd & on the pt of the sd A. & B., their [respive]

Wit-nesseth.

Also wit-nesseth.

Grant.

Haben-dum.

hrs & assns, to be observed & pformd, & as to all the premes subjt to the provo for redmon hinafter contd : PROVD ALWAYS that if the sd A. & B., or their respive hrs, exs, ads, or assns, or any of them, shl pay to the sd C., his exs, ads, or assns, the sd sum of £—— with intt for the same in the meantime at the rate of —— p.c. p.a. on the sd —— day of —— next, then the sd C., his exs, ads, or assns, will at any time thrafter upon the reqt & at the cost of the sd A. & B., or their respive hrs or assns, reconvey the sd premes hinbfe assured unto & to the use of the sd A. & B., their respive hrs & assns, in eql shares as tenants in common subjt as hinbfe mentd : AND THE SD A. & B. do hby jtly & sevlly covt with the sd C., his exs, ads, & assns, that so long as any moy shl remain owing on this psnt secy the sd A. & B., or their respive hrs, exs, ads, or assns, will in exoneron of the sd C., his hrs & assns, pay the sd rent & observe & pform the sd covts subjt to wch the sd premes first hinbfe descd are hinbfe assured, & on demand deliver the rects for such rents to the sd C., his hrs, exs, ads, or assns, & keep the sd C., his hrs, exs, ads, & assns, indemnified agst all actions, pcdgs, expses, & claims, on acct of the non-paymt of the sd rent, or the breach of the sd covts or any of them : AND FURTHER, that, &c., *to insure & repair, see* pp. 42, 45 : AND THAT in case & whenever default shl be made by the sd A. & B., their hrs, exs, ads, or assns, or any of them, in paymt of the sd rent, or in observg or pformg the sd covts, or any of them, or in keepg the sd premes repaired or insured as afsd, the sd C., his exs, ads, or assns, may pay such sums of moy & do all such acts as may be requisite specifically to pform the covts by the sd A. & B. hinbfe contd, & that all sums of moy expended for any of the pposes afsd by the sd C., his exs, ads, or assns, with intt thron at the rate afsd from the time of the same resply havg been so expended, shl be repd by the sd A. & B., their hrs, exs, ads, & assns, to the sd C., his exs, ads, or assns, on demand, & until such repaymt shl be a chge upon all the sd premes hby mtged : AND IT IS HBY agrd & decld that if eir of the sd A. & B., or eir of their hrs or assns, shl become a bkpt, or have a receivg order made agst him, or make or enter into any arrangemt or composon with or for the benefit of his credors, the power of sale conferred on the sd C., his exs, ads, or assns, by these psnts, & the statute in that behalf, shl become immedly exercisable witht

Proviso for redemption.

Covenant for payment of rent-charges.

Power for mortgagee to pay rents, and insure, and repair.

Extension of statutory power of sale.

PREC. XXXV.

the necessity for givg any notice in that behalf to the sd A. & B., their hrs or assns, or any of them : AND FURTHER that any sale under the afsd power may be made eir in conson of a gross sum or of a perpetual rent-chge or rent-chges, to be payable to the sd C., his hrs & assns, out of the premes sold, or ptly in conson of a gross sum & ptly of such a rent-chge or rent-chges, & subjt to such covts, exceptions, reservons, & restrons, & with the reservon grt or creation of such rts or easmts as the sd C., his exs, ads, or assns shl think fit: AND THAT on any sale such condons & provons may be made as to the paymt of or indemnity agst the sd rent of £——, & for chging the same exclusively on any pt of the sd premes out of wch the same is payable, or for apportiong the same betn different pts of the same premes & securg the indemnity of the respive pchasers agst the paymt of such rent or an undue portion thof as the sd C., his exs, ads, or assns, shall think fit : AND THAT all rent-chges made payable to the sd C., his hrs & assns, on any sale shl be subjt to this secy & to the same power of sale & rt or equity of redmon as the premes sold in conson thof: *Covt agst registron*, p. 50, *form* XXXVI. ; *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

NOTE ON BILLS OF SALE.

Law as to bills of sale.

The following points require to be attended to in connection with bills of sale by way of mortgage :—

13 Eliz. c. 5.

1. A bill of sale of chattels which remain in the possession of the assignor is void against creditors as being fraudulent within the meaning of 13 Eliz. c. 5, s. 2, unless such possession is consistent with the tenor and object of the deed ; this, however, will usually be the case if the assignment is by way of mortgage only: *Martindale* v. *Booth*, 3 B. & Ad. 498 ; *Alton* v. *Harrison*, L. R. 4 Ch. 622 ; *Steward* v. *Lombe*, 1 Brod. & Bing. 506 ; *Ex parte Games*, 12 Ch. D. 314 ; and there seems little if any risk of a bill of sale which is otherwise unimpeachable, being invalidated under that statute.

Reputed ownership in bankruptcy.

2. The bill of sale is liable to be defeated in the event of the bankruptcy of the mortgagor by the reputed ownership clause in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (iii.), as to any chattels comprised in it being at the commencement of the bankruptcy (which, by s. 43, relates back to the act of bankruptcy on which the receiving-order is made, subject to the provisions of s. 49, protecting certain dealings in good faith and without notice during the interval) in the possession, order or disposition of the bankrupt *in his trade or business*, with the consent and permission of the true owner (*i.e.*, of the mortgagee), under such circumstances that he is the reputed owner thereof : *Ex parte London and Universal Bank*, [1897] 2 Q. B. 461. This section will be excluded if the mortgagee obtains, or does his best to obtain possession of the chattels before the commencement of the bankruptcy, or between the act of bankruptcy (provided he has no notice of it) and the receiving-order (*Krehl* v. *The Great Central Gas, &c., Co.*, L. R. 5 Ex. 289; *Ex parte Arnold*, 3 Ch. D. 70; *Spackman* v. *Miller*, 12 C. B. N. S. 659; *Ex parte Harding*, L. R. 15 Eq. 223) decided on similar sections of the earlier Acts. It has been held that a person who occupies a residential property and carries on a farming and market gardening business for his pleasure at a profit, is not in "trade or business," but *contra* if the business is carried on as a means of livelihood (*Ex parte Sully*, 14 Q. B. D. 950); and a custom of hiring trade furniture may exclude the reputation of ownership (*Ex parte Turquand*, 14 Q. B. D. 636). The section as to reputed ownership does not apply to fixtures, even though in the nature of trade fixtures, or otherwise removable as between lessor and lessee (*Ex parte Barclay*, 5 De G. M. & G. 403; *Mather* v. *Fraser*, 2 K. & J. 536; *Whitmore* v. *Empson*, 23 Beav. 313), decisions on the Bankruptcy Act, 1849. The registration of a bill of sale under the Bills of Sale Act, 1878, s. 20, excluded the operation of the reputed ownership clause of the Bankruptcy Act; but that section has been repealed by the Bills of Sale Act, 1882, s. 15, so that as regards bills of sale by way of security for money not registered before the 1st day of November, 1882, registration is now of no avail for this purpose: *Ex parte Izard*, 23 Ch. D. 409; *Swift* v. *Pannell*, 24 Ch. D. 210.

Mortgage of all the debtor's property.

3. A mortgage of *all*, or substantially all, a man's property, whether he be in trade or not, is an act of bankruptcy and void, as being fraudulent within the Bankruptcy Act, 1883, s. 4, 1 (b), if made to secure a past debt, *Re Wood*, L. R. 7 Ch. 302; *Re Sinclair*, 26 Ch. D. 319; unless the mortgage be made in pursuance of a *bonâ fide* agreement made at the time of the advance, *Ex parte Izard*, L. R. 9 Ch. 271; *Ex parte Kilner*, 13 Ch. D. 245; *Ex parte Hauxwell*, 23 Ch. D. 626, not contemplating the postponement of the mortgage until the eve of insolvency: *Ex parte Fisher*, L. R. 7 Ch. 636; *Ex parte Burton*, 13 Ch. D. 102. But an assignment by way of mortgage of all a man's property for a substantial present advance, *Pennell* v. *Reynolds*, 11 C. B. N. S. 709; or for a past debt and a substantial present advance, *Mercer* v. *Peterson*, L. R. 2 Ex. 304, 3 Ex. 104; *Ex parte Reed*, L. R. 14 Eq. 586; *Ex parte Ellis*, 2 Ch. D. 797; provided the advance be *bonâ fide* for his benefit (*Ex parte Johnson*, 26 Ch. D. 338; *Re Rees*, [1894] A. C. 135); or for a past debt and future advances agreed to be made, and afterwards in fact made, provided there is a *bonâ fide* promise to make them, though not legally binding (*Ex parte Wilkinson*, 22 Ch. D. 788), is not invalidated by the Bankruptcy Act.

The question whether a mortgage of the whole of the debtor's present and future property, even for a present advance, would be enforceable as a whole by the Court, must be considered an open one, see *Coombe* v. *Carter*, 36 Ch. D. 348; *Tailby* v. *Official Receiver*, 13 App. Cas. 523; *Re Turcan*, 40 Ch. D. 5.

Fraudulent preference.

4. A voluntary conveyance made in favour of a creditor, with the object of giving him a preference over the other creditors, by a person who is adjudged bankrupt within three months afterwards, is void against the trustee in bankruptcy or liquidation, as being a fraudulent preference within the Bankruptcy Act, 1883, s. 48, and by s. 4 (1) (c), any fraudulent preference is an act of bankruptcy. But if the security be given under pressure, or in pursuance of an antecedent agreement: *Ex parte Craven*, L. R. 6 Ch. 70; *Smith* v. *Pilgrim*, 2 Ch. D. 127; *Ex parte Hodgkin*, L. R. 20 Eq. 746; decisions on the Act of 1869, or if it be made for the protection of the debtor, *New Prance, &c.*, v. *Hunting*, [1897] 2 Q. B. 19, it will not be within that enactment.

Bills of Sale Acts.

But the most important matters to notice are the requirements of the Bills

NOTE ON BILLS OF SALE.

Meaning of "bill of sale."

Imported goods.

of Sale Acts, 1878 and 1882 (41 & 42 Vict. c. 31, and 45 & 46 Vict. c. 43). Those Acts (which by s. 3 of the Act of 1882 are to be read together as one Act) apply to all bills of sale of "personal chattels" given as security for the payment of money (with the exception, so far at least as the Act of 1882 is concerned, of debentures of companies, see s. 17, and *infra*), including (Bills of Sale Act, 1878, s. 4, and Bills of Sale Act, 1882, s. 3) assignments, transfers, declarations of trust without transfer, inventories of goods with receipts thereto attached, or receipts for the purchase money of goods and other assurances of personal chattels, powers of attorney, authorities or licences to take possession of personal chattels as security for any debt, and agreements, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels or to any charge or security thereon is conferred: *Ex parte Parsons*, 16 Q. B. D. 532; *Ex parte Hubbard*, 17 Q. B. D. 690; *Hilton* v. *Tucker*, 39 Ch. D. 669; *Newlove* v. *Shrewsbury*, 21 Q. B. D. 41; *Charlesworth* v. *Mills*, [1892] A. C. 231. *Bonâ fide* leases with powers of distress are not generally, though under certain circumstances they may be bills of sale, *Lee* v. *Roundwood Colliery Company*, [1897] 1 Ch. 373. An instrument charging, &c., imported goods, executed prior to their deposit in a warehouse, &c., or to their being reshipped for export, or delivered to a purchaser, not being the person giving such instrument, is not a bill of sale; see the Bills of Sale Act, 1891, 54 & 55 Vict. c. 35.

"Apparent possession."

The Bills of Sale Act, 1878, only applies where the chattels remain in the "possession or apparent possession" of the grantor (s. 8), and neither Act applies to a security accompanied by delivery, or where the goods are already in the creditor's possession: *Charlesworth* v. *Mills*, [1892] A. C. 231; or to goods sold by a husband to his wife remaining in the house where the husband and wife live: *Ramsay* v. *Margrett*, [1894] 2 Q. B. 18; *Re Satterthwaite*, 2 Manson, 52 (1895). It has been held that the Acts do not include a delivery order as to furniture warehoused in the borrower's name, *Grigg* v. *National, &c., Co.*, [1891] 3 Ch. 206; or an agreement between a principal and his agent making goods in the agent's hands security for his advances to his principal, *Morris* v. *Delobbel-Flipo*, [1892] 2 Ch. 352. As to the difference between "apparent possession" under the Bills of Sale Acts, and "reputed ownership" under the Bankruptcy Act, see 2 Dav. Prec., Part II., p. 155 *et seq.*

Meaning of "personal chattels."

As to fixtures, growing crops, and trade machinery.

The expression "personal chattels" (Bills of Sale Act, 1878, s. 4) means goods, furniture, and other articles capable of complete transfer by delivery, and also (when separately assigned or charged), fixtures and growing crops, and (whether separately assigned or charged, or not) "trade machinery," as defined by the Act of 1878, s. 5, *i.e.*, machinery used in any factory or workshop, other than fixed motive power, fixed power machinery, and the pipes for steam, gas, and water, *Ex parte Moore*, 14 Ch. D. 379; *Topham* v. *Greenside, &c., Co.*, 37 Ch. D. 281. But fixtures (other than "trade machinery" as so defined), or growing crops when respectively assigned or charged *with* the land or buildings, by the *same* instrument, are not to be deemed to be separately assigned or charged, and therefore to come within the Acts, by reason only that they are assigned by separate words, or that power is given to sever them from the land or building, without otherwise taking possession of or dealing with such land or building (Bills of Sale Act, 1878, s. 7). It has been held that, notwithstanding the Act, a valid security may be given upon "trade machinery" affixed to the land by an ordinary mortgage of the land, without any express assignment or mention of such fixed trade machinery, or of fixtures generally (which of course, by the general law, and *à fortiori*, under the C. A., 1881, s. 6, pass by a conveyance of the land), *In re Yates*, 38 Ch. D.

NOTE ON BILLS OF SALE.

112; and this is so even if there is an express assignment of fixtures (including fixed trade machinery) with the land, provided no power is given to deal with them separately from the land, *Re Brooke*, [1894] 2 Ch. 600; but not if power is given to deal with them apart from the land, *Climpson* v. *Coles*, 23 Q. B. D. 465; nor if the personal chattels are dealt with *quâ* personal chattels, *Small* v. *National Provincial Bank of England*, [1894] 1 Ch. 686.

Removal of trade fixtures.

A mortgagor cannot as between himself and his mortgagee in the absence of special agreement remove fixtures put up by himself even if they are trade fixtures, *Hobson* v. *Gorringe*, [1897] 1 Ch. 182. But a tenant of a mortgagor in possession may remove trade fixtures put up by himself after the mortgage; and where trade machinery is supplied to him by a stranger, and affixed to the land after the mortgage on an agreement that until payment they are not to become his property, and that in default of payment at the proper time the persons supplying them may enter and remove them, that person may remove them as against the mortgagee. The question, whether in either of these cases, fixtures can be removed which were affixed to the land before the mortgage, has not been decided; but it is submitted that they can be removed, on the ground that the mortgagor cannot confer on the mortgagee a greater right to the fixtures than he has himself: *Gough* v. *Wood*, [1894] 1 Q. B. 713.

As to the chattels to be assigned.

5. A bill of sale is void (except as against the grantor) in respect of any chattels not specifically described in a schedule: Bills of Sale Act, 1882, s. 4. As to what is a specific description, see *Carpenter* v. *Deen*, 23 Q. B. D. 566; *Davidson* v. *Carlton Bank*, [1893] 1 Q. B. 82. A bill of sale is also void (except as against the grantor) in respect of any chattels which are so described, of which the grantor was "not the true owner" at the time of its execution (Bills of Sale Act, 1882, s. 5), *Ex parte Barnett*, 38 W. R. 351. But these sections are not to apply to crops actually growing at the time of execution of the bill of sale, or to fixtures, plant, or "trade machinery," substituted for those specifically described (Bills of Sale Act, 1882, s. 6). A cabdriver's horses are not plant: *London and Eastern Counties Loan and Discount Co.* v. *Creasey*, [1897] 1 Q. B. 768.

"True owner."

Previous unregistered bill of sale.

A bill of sale by way of security is void as against a previous unregistered bill of sale by way of absolute assignment (and therefore not altogether void, *e.g.*, in favour of the grantor's wife), of the same chattels; inquiry should therefore always be made in taking a bill of sale whether any such assignment has been previously made: *Tuck* v. *Southern Counties Deposit Bank*, 42 Ch. D. 471. But a grantor of chattels by a bill of sale by way of mortgage is still the "true owner" of the chattels within that section, and may execute a subsequent valid bill of sale of the same chattels, *Thomas* v. *Searles*, [1891] 2 Q. B. 408. The legal owner of chattels is the "true owner" within s. 5, whether he is also equitable owner or only trustee for another person, *Ex parte Williams*, [1892] 2 Q. B. 591. A person entitled to a joint beneficial interest in chattels is also the "true owner," *Ex parte Pratt*, 7 Mor. 132; Bills of Sale Act, 1882, s. 5.

After-acquired chattels.

A general assignment in the body of the instrument (or, it seems, in the schedule), of all after-acquired chattels, or of all other existing chattels, makes the whole bill of sale void for all purposes, whether against the grantor, or not, as not being in accordance with the statutory form (Bills of Sale Act, 1882, s. 9), *Thomas* v. *Kelly*, 13 App. Cas. 506. In fact, future chattels, or chattels not admitting of a specific description, cannot now be charged, with the exception of the matters mentioned in Bills of Sale Act, 1882, s. 6, which should be described in the schedule; a covenant to replace chattels destroyed or worn out does not, however, invalidate a bill of sale, *Seed* v. *Bradley*, [1894] 1 Q. B. 319.

NOTE ON BILLS OF SALE.

A floating charge over the stock or assets of a business, can now only be made in the case of debentures of a joint-stock company, see p. 155.

As to stating consideration.

6. A bill of sale must truly state the consideration for which it was given, otherwise it is made void "in respect of the personal chattels comprised therein:" Bills of Sale Act, 1882, s. 8; but not absolutely void under Bills of Sale Act, 1882, s. 9, *e.g.*, as regards the covenant to pay: *Heseltine* v. *Simmons*, [1892] 2 Q. B. 547. It is sufficient if the facts are accurately stated either as to their legal effect or as to their mercantile business effect, though they may not be stated with strict accuracy: *Ex parte Johnson*, 26 Ch. D. 338. The consideration need not consist of a present advance to the mortgagor, but may consist, *e.g.*, of a pre-existing debt, of the payment of debts owing by the mortgagor to a third person, or of a covenant to take up current liabilities of the mortgagor, and may require statement in a recital, to which there would be no objection under the Act; no part of an alleged advance must be retained by the mortgagee for commission or otherwise, but there may be a set-off of an existing debt arising independently of the transaction in hand: *Ex parte Johnson*, 26 Ch. D. 338; *Sharp* v. *McHenry*, 38 Ch. D. 427; *Richardson* v. *Harris*, 22 Q. B. D. 268.

As to showing the whole transaction.

7. Every condition, defeasance, or declaration of trust not contained in the body of the bill of sale, shall be written on the same paper or parchment for the purposes of registration, otherwise the registration shall be void: Bills of Sale Act, 1878, s. 10 (3). So that a collateral promissory note avoids the bill of sale, *Monetary Advance Co.* v. *Cater*, 20 Q. B. D. 785; and where simple interest was reserved by the bill of sale, a collateral security for the principal sum secured by the bill of sale at compound interest avoided it, *Edwards* v. *Marcus*, [1894] 1 Q. B. 587; but not the mere deposit of a policy of assurance as collateral security, *Carpenter* v. *Deen*, 23 Q. B. D. 566; or a collateral agreement that out of the advance a pre-existing debt shall be paid, *Thomas* v. *Searles*, [1891] 2 Q. B. 408. In addition to this it seems that the bill of sale will be void under s. 9 of the Act of 1882, as not being in accordance with the statutory form, unless all the terms of the bargain appear upon its face, *Lee* v. *Barnes*, 17 Q. B. D. 77; *Watson* v. *Strickland*, 19 Q. B. D. 391; *Sharp* v. *McHenry*, 38 Ch. D. 427. A collateral agreement that a bill of sale should not be made available until the grantee has exhausted certain other securities for the advance has, however, been held not to avoid the bill of sale, either as being a term for the "defeasance" of the security (Bills of Sale Act, 1878, s. 10 (3)), or as not being in accordance with the form in the schedule (Bills of Sale Act, 1882, s. 9), *Heseltine* v. *Simmons*, [1892] 2 Q. B. 547.

Bill of sale under £30 void.

8. A bill of sale given in consideration of any sum under £30, is absolutely void (Bills of Sale Act, 1882, s. 12), *Davis* v. *Usher*, 12 Q. B. D. 490; *Darlow* v. *Bland*, [1897] 1 Q. B. 125.

As to distress for rates and taxes.

9. A bill of sale does not protect chattels against a distress under a warrant for taxes or rates (Bills of Sale Act, 1882, s. 14); but this section does not apply where proceedings for the recovery of the rate have been taken in the County Court under s. 261 of the Public Health Act, 1875, and not by distress warrant under s. 256: *Local Board of Wimbledon* v. *Underwood*, [1892] 1 Q. B. 836. As to covenants for payment of rates and taxes, see p. 153.

Restriction on right of seizure.

10. Chattels assigned under a bill of sale are not to be seized or taken possession of by the grantee for any other than the causes specified in Bills of Sale Act, 1882, s. 7, namely—(1) default in payment of the money secured at the time provided for payment, or in the performance of any covenant or agreement "necessary for maintaining the security"; (2) bankruptcy of the grantor (a case in which the grantee's title would generally have been defeated by the reputed ownership clause in the Bankruptcy Acts, see p. 146), or a distress for rent, rates, or taxes; (3) fraudulent removal of the goods; (4) non-production, without reasonable excuse on demand in writing, of the last receipts for rent, rates, and taxes, *Ex parte Wickens*, [1898] 1 Q. B. 543; (5) an execution under a judgment against the grantor. The chattels must remain on the premises after seizure for five clear days before they are removed or sold (Bills of Sale Act, 1882, s. 13), within which time the Court is empowered to interfere to restrain the removal or sale on sufficient cause (Bills of Sale Act, 1882, s. 7); but this provision is for the benefit of the grantor only, and does not give his landlord any rights, *Tomlinson* v. *Consolidated Credit Co.*, 24 Q. B. D. 135. A power of seizure in breach of this section, will make the whole bill of sale void (Bills of Sale Act, 1882, s. 9); see pp. 153, 154.

Attestation.

11. A bill of sale is absolutely void unless attested as regards the execution by the grantor by one or more credible witness or witnesses, not being a party or parties (Bills of Sale Act, 1882, ss. 8, 10). A bill of sale is void as not being in the form of the schedule (Bills of Sale Act, 1882, s. 9), if the addresses and descriptions of the witnesses do not appear in the attestation clause; and it is not sufficient that they appear in the affidavit of registration, *Parsons* v. *Brand*, 25 Q. B. D. 110; nor is an address sufficient without a description, *Sims* v. *Trollope*, [1897] 1 Q. B. 24.

Registration.

12. A bill of sale is absolutely void, even as against the grantor, unless it is registered under the Bills of Sale Act, 1878, s. 10, within seven clear days after execution, and the registration must be renewed every five years: Bills of Sale Act, 1878, s. 11; Bills of Sale Act, 1882, s. 8. Non-renewal under the Bills of Sale Act, 1878, rendered a bill of sale void only as against strangers; but now non-renewal renders it absolutely void, even as between grantor and grantee: Bills of Sale Act, 1882, s. 8; *Fenton* v. *Blythe*, 25 Q. B. D. 417. If the affidavit of execution be sworn before the solicitor of the grantee the bill of sale will be void, *Baker* v. *Ambrose*, [1896] 2 Q. B. 372.

Renewal of bill.

13. The device formerly in use of evading registration by renewing the bill of sale from time to time within the time allowed for registration, was put an end to by the Bills of Sale Act, 1878, s. 9.

Bills of Sale Act, 1882, s. 9.

14. A bill of sale made or given by way of security for the payment of money by the grantor thereof, is void unless made in accordance with the form in the schedule to the Bills of Sale Act, 1882, s. 9. The following is a copy of the schedule:—

FORM OF BILL OF SALE.

Statutory form of bill of sale.

This indenture, made the —— day of ——, between A. B. of ——, of the one part, and C. D. of ——, of the other part, witnesseth that in consideration of the sum of £—— now paid to A. B. by C. D., the receipt of which the said A. B. hereby acknowledges [*or whatever else the consideration may be*], he, the said A. B., doth hereby assign unto C. D., his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed, by way of security for the payment of the sum of £——, and interest thereon at the rate of —— per cent. per annum [*or whatever else may be the rate*]. And the said A. B. doth further agree and declare, that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, by equal —— payments of £—— on the —— day of —— [*or whatever else may be the stipulated times or time of payment*]. And the said A. B. doth also agree with the said C. D. that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

NOTE ON BILLS OF SALE.

Bills of Sale Act, 1882, s. 9.

Provided always, that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D. for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

IN WITNESS, &c.

Signed and sealed by the said A. B., in the presence of me, E. F. [*add witness's name, address, and description*].

The impediments which the Act of 1882 has imposed in the way of securities (other than "debentures" of companies) upon chattels are such as to render such securities too precarious to be of much utility even after registration, which is absolutely necessary to make them of any avail even as against the grantor. The requirement that every "bill of sale" shall be in accordance with the form in the schedule to the Act, which contains a formal assignment of the chattels, is necessarily inapplicable to some instruments (such as a declaration of trust without transfer), which are included in the definition of a "bill of sale," and as to ordinary bills of sale in which the chattels are assigned, has given rise to very great doubt as to the extent to which additions and variations may be introduced into the statutory form.

General effect of s. 9.

The rule of construction which was laid down in *Ex parte Stanford*, 17 Q. B. D. 259, *viz.*, that a divergence is material only when it gives the bill of sale a legal effect other than it would have if drawn in the statutory form, has been much narrowed by *Thomas* v. *Kelly*, 13 A. C. 506, where it was laid down that a bill of sale is void whenever it departs from the form in anything that is characteristic of that form; for example, by the omission of the proviso as to s. 7 of the Bills of Sale Act, 1882, though such omission would not in any way alter the legal effect of the bill. But the insertion of a covenant to replace articles worn out is "for the maintenance of the security," and not a divergence from the form in the schedule, *Seed* v. *Bradley*, [1894] 1 Q. B. 319.

And as to the importance of avoiding unnecessary complication and prolixity, see *per* Fry, L.J., in *Ex parte Stanford*, *ubi supra;* and *per* Lord Esher, M.R., in *Furber* v. *Cobb*, 18 Q. B. D. 494. All alterations or additions should be avoided, except such as are sanctioned by the reported cases or are otherwise clearly within the words in italics in the form. The bill must not include anything besides personal chattels, *e.g.*, tenant right, *Cochrane* v. *Entwistle*, 25 Q. B. D. 116. If the names and descriptions of the parties, though ambiguous, are such as would be held good in any mercantile document, the bill of sale will not be rendered void on account of that ambiguity, *Simmons* v. *Woodward*, [1892] A. C. 100; the omission of the address of the grantee renders the Bill of Sale void, *Altree* v. *Altree*, [1898] 2 Q. B. 267.

Names and descriptions of parties.

As to mode and time of payment.

The sum secured must consist of a principal sum and rateable interest, the rate of interest being clearly stated, *Myers* v. *Elliott*, 16 Q. B. D. 526, *Blankenstein* v. *Robertson*, 24 Q. B. D. 543; it may be payable by instalments, consisting partly of interest down to the time of each payment as contemplated by the statutory form, *Linfoot* v. *Pockett*, [1895] 2 Ch. 835; and the payments may be unequal, the expression in the form "by equal payments" being directory not obligatory, *Re Cleaver*, 18 Q. B. D. 489. Interest may be reserved in any form, *e.g.*, 1*s.* in the pound, *Lumley* v. *Simmons*, 34 Ch. D. 698; but interest upon interest must not be reserved, *Dresser* v. *Townsend*, 81 L. T. Jo. 230.

The instalments must not consist partly of an agreed sum for interest and bonus, it being impossible to say how much is interest and how much bonus, *Myers* v. *Elliott*, 16 Q. B. D. 526; indeed, no bonus must be added to the sum secured, *Re Williams*, 25 Ch. D. 656. The whole amount may be made payable

Bills of Sale Act, 1882, s. 9.

on failure to pay one instalment of capital with interest on the capital unpaid down to that time, *Lumley* v. *Simmons*, 34 Ch. D. 698; but if the instalments consist partly of capitalised interest, such a provision avoids the bill of sale, as it makes interest payable before it has accrued, *Myers* v. *Elliott*, *ubi supra; Roe* v. *Mutual, &c., Association*, 56 L. T. (N. S.) 631. An inaccuracy with regard to the provisions for paying instalments, *e.g.*, where the principal sum was not an exact multiple of the instalments agreed upon, and the last instalment must therefore be somewhat less than the amount stated, was held in *Simmons* v. *Woodward*, [1892] A. C. 100, not to invalidate the bill.

The principal may be made payable in one payment with interest at a fixed date, with subsequent interest in case of default, *Watkins* v. *Evans*, 18 Q. B. D. 386; but must not be payable "on demand," *Sibley* v. *Higgs*, 15 Q. B. D. 619.

Sums which may be paid by the grantee for insurance, rent, &c., may be secured by the bill of sale, though both the amount and time of payment are uncertain; but a power of seizure on default of payment of such sums will invalidate the bill, *Topley* v. *Corsbie*, 20 Q. B. D. 350. The time for payment may depend on a contingency, *Lumley* v. *Simmons*, 34 Ch. D. 698; but a bill of sale to secure a surety against whatever money he might be called upon to pay is void, *Hughes* v. *Little*, 18 Q. B. D. 32; and so, it seems, would be a bill of sale to secure future advances, or an account current with a bank, *Cook* v. *Taylor*, 3 Times L. R. 800.

Repayment must be made to the person who finds the money, to whom also the property must be assigned, *Melville* v. *Stringer*, 13 Q. B. D. 392; where a bill of sale mixing up several separate mortgages was held void.

Terms for the "maintenance or defeasance of the security."

With reference to provisions for the "maintenance or defeasance of the security," it is important to remember that *if a power of seizure is given* on breach of covenants, whether expressly or by implication, they must be covenants "*necessary* for maintaining the security," and otherwise comply with s. 7, otherwise the bill of sale will be void as altering the legal effect of the statutory form, which provides against seizure for any cause except those specified in s. 7: *Davis* v. *Burton*, 10 Q. B. D. 414; 11 Q. B. D. 537; *Furber* v. *Cobb*, 18 Q. B. D. 494. If the money is made payable on breach of covenants, a power of seizure on breach is implied, *Barr* v. *Kingsford*, 56 L. T. (N. S.) 861. If, on the other hand, no power of seizure on breach is given or implied, it is only necessary that the covenants should be terms "for the maintenance or defeasance of the security," *Topley* v. *Corsbie*, 20 Q. B. D. 350.

As to insurance, payment of rent, &c.

A covenant to insure and produce the receipts for premiums is "necessary for maintaining the security"; and a bill of sale containing such a covenant is good in spite of a general power of seizure in case of non-performance of any covenant or agreement, *Hammond* v. *Hocking*, 12 Q. B. D. 291. A covenant to pay rent, rates, and taxes, and other outgoings of the premises in which the chattels are, is also "necessary, &c.," but the covenant to produce the receipts must, if a power of seizure is given on default, comply with Bills of Sale Act, 1882, s. 7 (4), *i.e.*, the non-production must be "without reasonable excuse," and "on demand in writing," *Davis* v. *Burton*, 11 Q. B. D. 537; *Barr* v. *Kingsford*, 56 L. T. (N. S.) 861; if a power of seizure is not given, *Topley* v. *Corsbie*, 20 Q. B. D. 350, or is given only for the causes specified in s. 7 of the Bills of Sale Act, 1882, *Weardale, &c., Co.* v. *Hodson*, [1894] 1 Q. B. 598; *Cartwright* v. *Regan*, [1895] 1 Q. B. 900, a covenant to produce receipts on demand is good.

As to replacing or repairing chattels.

A covenant to replace or repair goods worn out, &c., has been held "necessary for maintaining the security," *Furber* v. *Cobb*, 18 Q. B. D. 494; but a covenant to bind additional or substituted goods will invalidate the security, *Thomas* v.

NOTE ON BILLS OF SALE.

Bills of Sale Act, 1882, s. 9. Power for grantee to insure, &c. Covenant not to remove chattels. Other covenants.

Kelly, 13 App. Cas. 506. A power for the grantee to insure or pay rents, &c., or repair, in default of the grantor doing so, with a provision that any moneys so paid by the grantee with interest shall be a charge on the property, is within the statutory form, and does not infringe s. 7, inasmuch as it gives no power to seize in default of payment; but if the moneys so paid are to be "recoverable in the same manner as the principal moneys and interest hereby secured," a power of seizure is imported for a cause not specified in s. 7 (such a stipulation not being "necessary, &c."), and the bill of sale is void, *Topley* v. *Corsbie*, 20 Q. B. D. 350. A covenant not to remove the chattels is a term "for the maintenance of," but *quære*, if it is "necessary for maintaining the security" so as to justify a power of seizure on breach: *Furber* v. *Cobb*, 18 Q. B. D. 494, *per* Sir J. Hannen, p. 505; *Topley* v. *Corsbie*, 20 Q. B. D. 350, *per* A. L. Smith, J., p. 353. A covenant by the grantor to pay interest on mortgages on the premises in which the goods might be (not confined to such mortgages as gave a power of distress over goods), or a provision for the retention of the bill of sale by the grantee after payment of the amount due, are each sufficient to invalidate it: *Watson* v. *Strickland*, 19 Q. B. D. 391.

A statement in the bill of sale that a covenant is "necessary for maintaining the security" is useless, and the proviso as to s. 7 does not save the instrument if there is in fact power to seize in some events not authorised by that section. *Furber* v. *Cobb*, *ubi supra*.

Execution by attorney.

A bill of sale may be executed by attorney, and the grantee is not necessarily excluded from being such attorney; thus a power given to a creditor in default of a certain payment by the debtor, to tender to the latter a bill of sale for execution, and in case of non-execution for seven days to execute the bill as attorney for the debtor, was held good: *Furnivall* v. *Hudson*, [1893] 1 Ch. 335.

Covenants for title.

With regard to covenants for title, if the grantor conveys "as beneficial owner," the bill of sale is void, owing to the covenants for title imported into it by s. 7 of the C. A., 1881, *Ex parte Stanford*, 17 Q. B. D. 259; but a covenant for further assurance may be inserted (*Re Cleaver*, 18 Q. B. D. 489), though it has not been held to be "necessary" so as to justify a power of seizure on default.

Power of seizure.

It seems safe to insert an express power of seizure conforming to s. 7, as this may be done, and some doubt has been expressed as to whether such a power is implied, *Ex parte Official Receiver*, *Re Morritt*, 18 Q. B. D. 222; *Watkins* v. *Evans*, 18 Q. B. D. 386. A power to break open doors and windows for the purpose of entry, does not make the bill of sale void, *Re Morritt*, *ubi supra*; *Lumley* v. *Simmons*, 34 Ch. D. 698. A power to seize on bankruptcy of grantor may be inserted if it does not exceed the power given in s. 7 of Bills of Sale Act, 1882, *Ex parte Allam*, 14 Q. B. D. 43; but it must not include composition with creditors, *Barr* v. *Kingsford*, 56 L. T. (N. S.) 861; or taking the benefit of any Bankruptcy Act, *Gilroy* v. *Bowey*, 59 L. T. (N. S.) 223.

Power of sale.

A power of sale is implied in every bill of sale by the power of seizure; the power of sale given to mortgagees by s. 19 of the C. A., 1881, is not incorporated by the statutory form: *Re Morritt*, 18 Q. B. D. 222; *Calvert* v. *Thomas*, 19 Q. B. D. 204; nor do the limitations imposed on that power by s. 20 of the same Act apply; an express power of sale may be inserted (*ib.*). By s. 13 of the Act of 1882, the chattels are not to be removed or sold for five clear days from the day they were seized; and by the proviso of s. 7, the Court may within such five days, restrain the removal or sale, so that a power to sell on default of payment makes the bill of sale void: *Hetherington* v. *Groome*, 13 Q. B. D. 789. Under this section where goods have been seized in default of payment of instalments and the grantor offers to pay, the Court has power to restrain the sale: *Ex parte Cotton*, 11 Q. B. D. 301. The proceeds of sale may be made applicable to paying off incumbrances on the goods, costs of warehousing, and other expenses: *Re Cleaver*, 18 Q. B. D. 489; *Lumley* v. *Simmons*, 34 Ch. D. 698; but care must be taken that the words are not wide enough to cover expenses not properly allowable, as then the bill of sale will be void: *Calvert* v. *Thomas*, 19 Q. B. D. 204. A clause exonerating the purchaser from inquiring whether the power of sale had become exercisable, *Blaiberg* v. *Beckett*, 18 Q. B. D. 96, or allowing the grantee to take a commission on the sale as auctioneer, *Furber* v. *Cobb*, 18 Q. B. D. 494, or giving him power to take the goods himself at a valuation, *Lyon* v. *Morris*, 19 Q. B. D. 139, are each sufficient to avoid the bill of sale.

Bills of Sale Act, 1882, s. 9.

Application of proceeds of sale.

If an instrument is void under s. 9, it is void only as regards the "personal chattels" comprised in it; if it refers also to "chattels real" it may be effective as regards them, *Re Isaacson*, [1895] 1 Q. B. 333.

Effect of invalidity.

An actual and completed sale, followed by a hiring agreement, if a separate and distinct dealing, does not come within the Bills of Sale Acts even if the effect of the whole is to secure money; the case is otherwise if the sale, though actual, is only part of one security intended to be completed by a hire agreement, *Beckett* v. *Tower Assets Co.*, [1891] 1 Q. B. 638.

Evasion of the Acts by sale and re-hire.

By s. 17 of the Act of 1882 it is enacted that "Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company."

Act of 1882, s. 17.

The term debenture in the ordinary meaning, imports a debt—an acknowledgment of a debt—and a covenant to pay; and an instrument that falls within this ordinary meaning is a debenture under this section and is excluded from the operation of the Bills of Sale Acts: *Edmonds* v. *Blaina Furnaces Co.*, 36 Ch. D. 215; *Levy* v. *Abercorris Slate and Slab Co.*, 37 Ch. D. 260; but a mere memorandum of deposit of title deeds as security for a floating balance, not admitting any debt, or containing a promise to pay, is not a "debenture," *Topham* v. *Greenside, &c., Co.*, 37 Ch. D. 281; and it is doubtful if a deed of charge to cover debentures is a "debenture" or not, *Richards* v. *Overseers of Kidderminster*, [1896] 2 Ch. 212; an industrial society is not a "company" within the meaning of this section, *G. N. R.* v. *Coal Co-operative Society*, [1896] 1 Ch. 187.

As to imported goods, see the Bills of Sale Acts, 1890 and 1891.

Imported goods.

See further as to this note, the Bills of Sale Acts, 1878 and 1882, by Herbert Reed, 11th ed., 1897.

XXXVI.

PREC. XXXVI.

BILL *of* SALE *of* PERSONAL CHATTELS, *according to the* STATUTORY *form to be* REGISTERED. *With* VARIATIONS (*a*).

Parties.

Testatum.

Covenant for payment.

Proviso making principal

PARTIES, A., *mtgor,* 1 (*b*); B., *mtgee,* 2 (*c*): WITNETH THAT, in conson of the sum of £—— now pd to the sd A. by the sd B., the rect of wch the sd A. hby acknowes, he, the sd A., doth hby assn unto the sd B., ALL & singr the sevl chattels & things specifically descd in the schdle hto annexed by way of secy for the paymt of the sum of £—— & intt thron at the rate of —— p.c. p.a.: AND THE SD A. doth further agree & declare that he will duly pay to the sd B. the ppal sum afsd by eql —— paymts of £—— on the —— day of ——, &c., togr with the intt due at the respive times of paymt of the instalmts of the ppal (*d*) [*or covt to pay the whole ppal sum with intt on a fixed date, & subseqt intt on default,* pp. 9 & 10, *forms* I. & II.] (*e*): PROVD ALWAYS, & it is hby agrd & decld that [if the sd A., his exs or ads, shl at any time make default in the paymt of any of

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(*a*) See above, pp. 146 *et seq.*, note.

(*b*) Care must be taken correctly to describe the grantor's name, residence, and occupation in the bill of sale, although it is in the affidavit accompanying registration that the statute requires the description: see Act of 1878, s. 10 (2). As to the names and descriptions of the parties, see *Simmons* v. *Woodward*, [1892] A. C. 100. The name and address of the grantee must be given, *Altree* v. *Altree*, [1898] 2 Q. B. 267.

(*c*) The following variations may be made where the security is given under pressure for an antecedent debt:—

Variation where security given under pressure.

"WHAS the sd A. is indebted to the sd B. in the sum of £——; AND WHAS the sd B. has commenced an action in the —— Divon agst the sd A. for the recovery of the sd sum of £——: AND WHAS it has been agrd betn the sd A. & B. that the sd B. shd stay all pcdgs in the sd action upon havg the repaymt of the sd sum of £——, togr with his costs of the sd pcdgs amtg to £——, with intt at the rate hinafter mentd secd in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of the sd sum of £—— so owing by the sd A. to the sd B. as afsd, & of the premes, &c."

(*d*) See *per* Fry, L.J., 18 Q. B. D. 5; *Re Bargen*, [1894] 1 Q. B. 444.

(*e*) Forms VII., p. 31, VIII. and X., p. 33, might probably be safely inserted; but it is better to avoid all experiments.

the sd instalmts or intt or any pt thof resply for the period of thirty days after the time hinbfe appted for the paymt thof or] (*f*), if any event (*g*) mentd in the 7th section of the Bills of Sale Act (1878) Amendmt Act, 1882, shl happen, the whole of the sd ppal moy [wch shl for the time being remain unpd] with the intt due thron up to that time, shl forthwith become payable: AND IT IS HBY agrd & decld that the sd B., his exs, ads, or assns, may, on the happeng of any of the events mentd in the sd 7th section of the afsd statute, seize or take posson of all or any of the sd chattels & things, & eir remain in posson thof witht removg the same, or at any time after the expiron of five clear days from the day they were so seized or taken posson of, & subjt to the provons of the sd statute, remove & sell the sd chattels & things or any of them eir by public auction or private contract, & may, out of the sale moys, retain the ppal sum afsd, or so much thof as may for the time being remain unpd, & the intt then due, togr with all costs, chges, expses, & paymts (*h*) pperly incurred or made in maintaing, defendg or realisg his or their rts hrunder (*i*), & shl

Sum payable in certain events.

Power of seizure and sale.

Trusts of sale moneys.

(*f*) *Or*, "in paymt of the sd sum of £—— and interest or any pt thof at the time hby appted for paymt thof." The words in brackets can be omitted if the principal is payable in one sum.

(*g*) It may be thought desirable sometimes to set out the events specified in the section in full, omitting default in payment, namely, "if the sd A., his exs or ads shl make default in the pformce of any covt or agrmt contd hrin & necy for maintaing the secy, or shl become a bkpt, or suffer the sd goods or any of them to be distrained for rent, rates, or taxes, or shl fraudulently eir remove or suffer the sd chattels & things or any of them to be removed from the premes where they may be, or shl not witht reasble excuse upon demand in writg by the sd B., produce to him his last rects for rent, rates, & taxes, or if exon shl have been levied agst the goods of the sd A., under any judgmt at law;" and in the next clause, "If the sd A., his exs or ads, shl make default in paymt of the sum or sums of money hby secd at the time hrin provd for paymt, or on the happeng of any of the events mentd in the last clause, &c."

Events in which principal to be payable.

(*h*) Cf. *Lumley* v. *Simmons*, 34 Ch. D. 698.

(*i*) "*Or*, in & about enterg upon the premes where the sd chattels & things or any of them may be, & in dischargg any

Variation as to expenses.

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pay over the surplus, if any, to the sd A., his exs, ads, or assns, AND the sd A. hby further agrees with the sd B. that he, the sd A., his exs or ads, durg the continuce of this secy, will not remove the sd chattels & things or any of them from the premes where they may at any time be witht the consent in writg of the sd B., his exs, ads, or assns, AND will not permit or suffer the sd chattels & things or any of them to be destroyed or injured, or to deteriorate in a greater degree than they wd deteriorate by reasble use & wear thof, & will, whenever any of the sd chattels & things are [destroyed] (*a*), injured, or deteriorated forthwith [replace] (*a*), repair & make good the same [*or* will at all times keep up the value of the sd chattels & things to the sum of £—— at the least], AND will keep the sd chattels & things insured agst loss or damage by fire, &c., *continue as in covt to insure, form* XXIX., p. 42, *except the power for the mtgee to insure on default*, AND will from time to time pay all rents, rates, taxes, assessmts, & outgoings payable in respt of the premes where the sd chattels & things or any of them may at any time be within seven days after the same shl resply become payable, & will on the expiron of such seven days & on demand in writg by the sd B., his exs, ads, or assns, unless the sd A., his exs or ads, shl have a reasble excuse to the contrary, produce & show to the sd B., his exs, ads, or assns, the last rect or rects for such rents, rates, taxes, assessmts & outgoings, AND it is hby agrd & decld that if default shl at any time be made by the sd A., his exs or ads in [replacg *or*] (*a*) repairg, or in insurg or keepg insured the sd chattels & things, or in payg the sd rents, rates, taxes, assessmts & outgoings in accdce with the respive covts hinbfe contd, it shl be lful for the sd B., his exs, ads, or assns, to [replace *or*] (*a*) repair, or to insure or keep insured the sd

Covenant by mortgagee not to remove the chattels.

Nor to suffer them to be destroyed, &c.

And to insure.

And to pay rent, rates, taxes, &c.

Power for mortgagee to insure, repair, &c.

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distress exon or other incumbce on the sd chattels & things or any of them, & in seizg, takg, retaing, & keepg posson of the sd chattels & things or any of them, & in & about the carriage, removal, warehousg, valug, or sale (includg the cost of inventories, catalogues, or advertisg) of the sd chattels & things or any of them." (See pp. 154, 155, note.)

(*a*) The words in brackets which involve the importation of new chattels into the security are better omitted, see p. 153, note.

chattels & things, or to pay the sd rents, rates, taxes, assessmts & outgoings (as the case may be), & that all moys expended by him or them, for any of the sd pposes togr with intt thron at the rate of five p.c. p.a. from the time of the same havg been expended, shl on demand be repd to him or them by the sd A., his exs or ads, & until such paymt shl be a chge upon all the sd chattels and things (*c*), AND that it shl be lful for the sd B., his exs, ads, & assns, at all reasble times durg the continuce of this secy, to enter into & upon the premes where the sd chattels & things may at any time be to view the state of the sd chattels & things & to take inventories thof: PROVD ALWAYS, that the chattels hby assned shl not be liable to seizure, or to be taken posson of by the sd B. for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendmt Act (1882).

Power for mortgagee to enter and view the chattels.

Proviso as to seizure.

IN WITS, &c. (*d*).

The schdle above refd to.

[*Schdle, wch in the case of fixtures, plant, or trade machy may conclude with the words,* "& any fixtures, plant, or trade machy wch shl be used in, attached to, or brought upon the sd premes in substiton for any of the like fixtures, plant, & trade machy above descd" (*e*)].

Signed & sealed by the sd A. in the presce of me, C. [*add witness's name, address, & descripon*] (*f*).

(*c*) Care must be taken that the deed does not give a power of seizure for nonpayment of these monies; see pp. 153, 154.

(*d*) To be registered, see p. 151, note.

(*e*) See s. 6 (2) of the Act of 1882, p. 149, note.

(*f*) The failure of the witness to add his address and description avoids the bill of sale, *Sims* v. *Trollope*, [1897] 1 Q. B. 24; as to what is a sufficient address, see *Greenham* v. *Child*, 24 Q. B. D. 29. The affidavit of execution must not be sworn before the solicitor of the grantee, *Baker* v. *Ambrose*, [1896] 2 Q. B. 372.

XXXVII.

PREC. XXXVII.

MORTGAGE *by a* FIRM *of a* FREEHOLD *and* LEASEHOLD COLLIERY (*a*) *and* FIXED MACHINERY, &c., *to secure an* ACCOUNT CURRENT *with a* BANKING *firm* (*b*) *where the security is* NOT *intended to be a* BILL OF SALE. VARIATIONS *where the* COLLIERY *belongs to a* LIMITED COMPANY, *and where the* BANK *is a* LIMITED COMPANY (*c*).

PARTIES, A., B., & C., carryg on business in co-ptnp togr as colliery proprietors at —— under the firm of A. & Co. [The

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(*a*) The mortgage of the colliery passes by implication the business of working it, *County of Gloucester Bank* v. *Rudry, &c., Co.*, [1895] 1 Ch. 629.

(*b*) As to mortgages to secure future advances, see p. 79, note, and as to registered land, see Prec. I., p. 67.

As to mortgages by a firm of fixtures and trade machinery.

(*c*) As to mortgages of fixtures and chattels, see p. 148 *et seq.*, note. All fixtures on the land at the date of the mortgage pass to the mortgagee, *Hobson* v. *Gorringe*, [1897] 1 Ch. 182.

Where the mortgagors are not an incorporated company, having regard to the Bills of Sale Acts, especially the Act of 1882, movable plant and chattels and all machinery *not* in the nature of fixtures, must, when mortgaged, be comprised in a separate bill of sale, registered under and complying with the requirements of the Acts, and cannot be mortgaged in the same deed with other property: *Small* v. *National Provincial Bank of England*, [1894] 1 Ch. 686. Moreover, they cannot be charged to secure an account current with a bank; see p. 153, note. Fixtures which are *not* trade machinery (including the power machinery, &c., expressly excepted by that section from the operation of the Act), can unquestionably be mortgaged by an unregistered deed also charging the land, whether expressly mentioned, or left to pass with the land by implication (s. 4 of the Act of 1878); and according to *Re Yates*, 38 Ch. D. 112, *Re Brooke*, [1894] 2 Ch. 600, fixtures which are "trade machinery" can be effectively charged by a mere mortgage of the land and buildings as passing therewith by implication; and it would seem that an express mention of the fixtures cannot alter the result: *Re Brooke*, [1894] 2 Ch. 600; but it appears safer, especially if it is of special importance, to include all "trade machinery" in the security, to omit all express reference to fixtures. If bad as to the "trade machinery," the instrument will still remain good as to the land and other fixtures (*Re Burdett*, 20 Q. B. D. 310; *Re London, &c., Co.*, 58 L. T. (N. S.) 798). It must be borne in mind that if power is given to sell the fixtures apart from the land, the deed will, as to the "trade machinery," be a bill of sale and void: *Re Yates*, 38 Ch. D. 112; *Climpson* v. *Coles*, 23 Q. B. D. 465, and see p. 148, note; it is desirable to insert a clause expressly excluding the right of severance, see p. 163, note (*e*).

As to companies.

If the mortgagors are a company, it would not be safe to assume that a mortgage in the form in the text is a "debenture" within the exemption in s. 17 of the Act of 1882; and if it is desired to include chattels, it should be done, if possible, by way of an issue of a debenture or debentures of the ordinary type: see above, p. 155, note. On the general subject of mortgages by companies, see 2 Dav. Prec., Part II., p. 673, note; Palmer's Company Precedents, Vol. I., p. 782 *et seq.*

—— Co., Limd] (hinafter called the mtgors), 1; D., E., & F., carryg on business in co-ptnp togr as bankers at —— under the firm of D. & Co. [the —— Bankg Co., Limd] (hinafter called the mtgees), 2: WHAS the mtgors carry on their business of colliery proprietors at the collieries & works known as, &c., situate, &c., wch are ptly of freehd & ptly of leasehd tenure; AND WHAS the freehd portion thof being the hds hby grted were by an indre, dated, &c., assured & limd to the use of the mtgors in fee simple [as jt tenants for the pposes of their sd co-ptnp, *or as the case may be*]: AND WHAS the leasehd portion of the sd colliery & premes is held under an indre of lease dated, &c., & made, &c., whby, *recite ming lease to the mtgors* (*Vol. I.*, p. 365), *settg out the pcels & the clauses havg referce to the eron & removal of machy, &c.* (*d*); AND WHAS the mtgors keep an acct [for the pposes of their sd co-ptnp in their ptnp name of A. & Co.] with the mtgees: AND WHAS the mtgees may from time to time be under advce to or on acct of the mtgors in respt of bills or acceptces discounted for them or orwise in the usual course of such bankg business, & the mtgees have also agrd to make advces to the mtgors by way of loan by permittg them to overdraw their bankg acct or grantg them other accommodon upon an agrmt that all moys wch shl become owing on balce of acct or orwise from the mtgors to the mtgees with intt shd be secd in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance of the recited agrmt, & in conson of the premes,

Recitals.

Mortgagors carry on business.

Title to freeholds.

Title to leaseholds.

Account current kept.

Advances by bank.

Witnesseth.

Compare Prec. XLVIII., *post*, of an equitable mortgage to bankers; for a form of mortgage to a Banking Company constituted under 7 Geo. IV. c. 46, see 2 Dav. Prec., part 2, p. 353; and see the note to that Precedent, p. 381, as to the constitution of Banking Companies.

(*d*) If thought fit to insert "AND WHAS the mtgors are entled to certn fixed machy, bldgs, fixed engines, rails, turntables, erons, & other fixtures erected or fixed on the sd freehd & leasehd hds [the fixed machy & other fixtures on the sd freehd hds being descd in the 1st schdle hto, the fixed machy & fixtures on the sd leasehd hds wch the mtgors are not entled to remove, havg regard to the covts in the sd lease, being descd in the 1st pt of the 2nd schdle hto, & the fixed machy & fixtures on the sd leasehd hds which are removable by the mtgors being descd in the 2nd pt of the sd 2nd schdle]." But see note (*c*), *supra*.

Title to fixed machinery.

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Covenant to pay balance on demand. Further witnesseth. Grant. Freehold parcels. Habendum. To mortgagees. Further witnesseth. Demise. Leasehold parcels. Habendum. To mortgagees. Proviso for redemption.

the mtgors hby [jtly & sevlly] covt with the mtgees that the mtgors, &c., *covt for paymt of balce due on acct current on demand*, p. 12, *mutatis mutandis;* AND THIS INDRE ALSO WITNETH that in further psuance of the sd recited agrmt & for the conson afsd the mtgors **as benefl owners** [& each of them doth] hby grt unto the mtgees, *Freehd pcels, see Vol. I.*, p. 385 (*a*), TO HOLD the same premes UNTO & TO THE USE of the mtgees & their [hrs &] assns, subjt to the provo for redmon hinafter contd : AND THIS INDRE ALSO WITNETH that in further psuance of the recited agrmt & for the conson afsd, the mtgors **as benefl owners** do [& each of them doth] hby demise unto the mtgees, ALL THOSE the pces of land, mines or beds of coal, powers, liberties, authorities, & premes by the hinbfe recited indre of lease demised or grted (*b*), TO HOLD all the premes hby demised UNTO the mtgees for the residue of the sd term of —— yrs grted by the sd indre of lease, except the last day thof, subjt to the provo for redmon hinafter contd : PROVD ALWAYS, & it is hby agrd, that if the mtgors or their assns [the mtgors or the psons or pson hrafter constitutg the sd firm of A. & Co., or any of them, their or any of their hrs, exs, ads, or assns] shl on demand or witht any demand being made pay to the mtgees [or the psons or pson hrafter constitutg the sd firm of T. & Co.] or their [or his respive exs, ads, or] assns, or to one of the cashiers of the sd Bank the blce wch shl for the time being be owing as hinbfe

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(*a*) If thought fit insert "AND ALSO all & singr the fixed machy, bldgs, fixed engines, rails, turntables, erons, & other fixtures now erected on or affixed to the same premes hby grted, ar any pt thof [*or*, "descd in the sd 1st schdle hto"], AND all other the fixed machy, &c., *as above*, wch may at any time hrafter durg the continuce of this secy be erected on or affixed to the same premes or any pt thof." But see note (*c*), p. 160.

Machinery.

(*b*) If thought fit insert: "AND ALSO all & singr the fixed machy, bldgs, fixed engines, rails, turntable, erons & other fixtures now erected on or affixed to the sd premes hby demised, or any pt thof [*or*, "descd in the 1st & 2nd pts of the 2nd schdle hto"] : AND ALL other fixed machy, &c., *as above*, wch may at any time hrafter durg the continuce of this secy be erected on or affixed to the sd last-mentd premes of any pt thof." But see last note mentd psuant to the covt hinbfe contd, then the mtgees, or their [exs, ads, or] assns, shl at any time thrafter upon the reqt & at the cost of the mtgors or their assns [the mtgors, their hrs, exs, ads, or assns] reconvey or surrender the sd respive premes hby grted & demised resply unto the mtgors & their assns [the mtgors, their hrs, exs, ads, & assns, accdg to the nature of the sd respive premes & their rts & intt thrin] or as they shl direct; *Declaron of trust of nominal revons of leasehds, &c*, p. 30: AND THE mtgors hby [jtly & sevlly] covt with the mtgees, that the mtgors will at all times durg the continuce of this secy keep up the total value of the fixed machy & other fixtures for the time being erected on or affixed to the premes hby grted, to the sum of £—— at the least, & will keep up the total value of the fixed machy & other fixtures for the time being erected on or affixed to the premes hby demised in accdce with the covts by the lessees in the recited indre of lease, to £—— at the least, & also will keep all the sd bldgs, fixed machy & other fixtures for the time being erected on or affixed to the premes hby mtged, in good repair & workg order, & will keep such of the same premes as are or shl be of an insurable nature insured agst loss or damage by fire, *continue covt for insce &c.*, p. 42, *or* p. 45, *mutatis mutandis* (*c*), *Clause extendg statutory power of sale*, p. 27, *form* VI.; *Rect clause*, p. 59, *form* XLV. (*e*); *Covt agst registron*, p. 50, *form* XXXVI.; [*Sale of leasehds by way of underlease*, p. 29, *form* XIV.]; *Mtgee's indemnity*

Covenant by mortgagors to keep in repair and insure.

(*c*) If thought fit insert: "AND IT IS HBY agrd that all bldgs, fixed machy, fixed engines, rails, turntables, & other fixtures wch may at any time durg the continuce of this secy be erected upon or affixed to any of the sd hds & premes hby mtged, shl be subjt to this secy & to all the provons hrin contd," but see note, p. 160.

Future plant to be subject to mortgage.

(*e*) If it is intended to include any "trade machinery" in the security, insert: "PROVD ALWAYS that the sd fixed machy, &c., *as above*, shl not be sold septely or apt from the bldgs or land to wch the same are annexed." If the fixtures do not comprise any "trade machinery" as defined in the Bills of Sale Act, 1878, s. 5 (see *ante*, p. 148), the following power to deal with the fixtures separately from the land or buildings may be substituted for the clause in the text, and will in many cases be useful:—"PROVD ALWAYS that the sd *describe fixtures, wch shd not comprise any item of 'trade machy,' as so defined* (other than such as are affixed to the sd leasehd premes & are irremovable) may be

Power to sell fixtures separately.

PREC. XXXVII.

Proviso as to changes in firms.

clause, p. 59: PROVD ALWAYS (*a*), & it is hby agrd, that these psnts are intd to be a continug secy for the balce from time to time owing on the acct of the mtgors [the sd co-ptnp firm of A. & Co.] to the sd co-ptnp firm of D. & Co. [the mtgees] notwg any change in [the sd firm of A. & Co., or] the sd firm of D. & Co., by the death or retiremt of any member or members thof or the introdon of any new member or members or orwise. IN WITS, &c.

XXXVIII.

PREC. XXXVIII.

MORTGAGE *by* LIMITED COMPANY *of* FREEHOLD *and* LEASEHOLD IRONWORKS, MINES, *and fixed* MINING PLANT, *for securing payment of existing and future* BILLS *of* EXCHANGE, *subject to a* PRIOR CHARGE, *the security* NOT *being intended to be a* BILL *of* SALE. *Short Form* (*b*).

Recitals.

Drawing of bills.

Agreement.

Witnesseth.

PARTIES, the —— Co., Limd (hinafter called the Co), 1; A., *mtgee*, 2: WHAS the sd A. has drawn on the Co, & the Co have accepted the bills of exchange mentd in the schdle hto, & the sd A may from time to time, in the usual course of business, draw on the Co & the Co may accept other bills of exchange; AND WHAS it has been agrd betn the Co & the sd A. that the paymt of the sd psnt & future bills of exchange at maturity shl be secd in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the premes (*c*), the Co **as benefl owners** do hby, as to such pts of

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sold eir togr with or septely & apt from the land or bldgs to wch the same may be annexed." This clause will not make the fixtures "personal chattels" under the Bills of Sale Act, 1878," see s. 7, *ante*, p. 148.

(*a*) This clause will be omitted if both mortgagors and mortgagees are companies.

(*b*) As to excluding chattels from the security, and as to trade machinery, see the last precedent, and notes thereto.

As to merger of simple contract in specialty.

(*c*) The covenant for payment is omitted, lest it should prejudice the remedy on the bills, under the technical doctrine as to the merger of a simple contract in a specialty; see above, p. 13, note, *Commissioner of Stamps* v. *Hope*, [1891] the ppty hinafter mentd as are of freehd tenure, grt & as to such pts thof as are of leasehd tenure, demise unto the sd A., ALL & SINGR the iron mines & other mines & minls, lands, hds, & works (*d*), wch are now or may at any time (*e*) durg the continuce of this secy be held by or belong to the Co, TO HOLD all the same respive premes UNTO & TO USE of the sd A., his hrs, exs, ads, & assns resply, accdg to the tenure or nature of the same premes resply, as to such pts of the sd premes as are of leasehd tenure, for the respive residues now unexpired of the sevl terms of yrs for wch the same premes resply are held by the Co except the last day of each such term, & as to all the residue of the sd premes absolutely: SUBJT, as to such of the sd premes as are comprd in or subjt to the same, to a mtge dated, &c., made by the Co to X. & Y. in trust for securg the debts thrin mentd or refd to, amtg to the sum of £—— & the intt thron, & subjt to the provo for redmon hinafter contd; PROVD ALWAYS, & it is hby agrd, that if the Co or their assns shl, at the maturity thof resply, pay the sevl bills of exchange mentd in the sd schdle hto, & every other bill of exchange wch may hrafter be drawn on the Co by the sd A. & accepted by the Co, then the sd A., his hrs, exs, ads, or assns resply, shl at any time thrafter, upon the reqt & at the cost of the Co or their

Convey-ance. Parcels. Haben-dum. To mort-gagee.

Subject to prior charge.

Proviso for redemp-tion.

A. C. 476; 2 Dav. Prec., pt. 2, p. 608, note. As there is a prior mortgage vesting the legal estate in the freeholds and leaseholds in the first mortgage, this deed might be in the form of a charge, instead of a conveyance with a proviso for redemption, thus:—

"The Co as benefl owners (*see* p. 62, note), do hby chge all & singr, &c., *Pcels as in the text, subjt to the prior mtge,* with the paymt at the maturity thof resply, &c., *as in the provo for redmon in the text.*" *In the case of an ordinary mtge to secure advces, this wd run,* "with the paymt to the sd A., of the sd ppal moys & intt psuant to the covt of the Co hinbfe contd."

Second mortgage in form of charge.

The form of a charge might moreover be a means of avoiding the necessity for obtaining the lessor's licence in the case of leaseholds subject to a condition against assigning or underletting without licence.

(*d*) If thought fit, add "bldgs, erons, furnaces, foundries, fixed machines & engines, rlys, tramways, roads, & machy & other things of the nature of fixtures." See above, p. 160, note (*c*).

(*e*) A conveyance of property to be acquired in the future cannot pass the legal estate; but it operates in equity. See the cases discussed in *Tailby* v. *Official Receiver*, 13 App. Cas. 523.

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assns, reconvey, surrender, & reassn the sd respive mtged premes to the Co or their assns, or as they shl direct, subjt to the sd prior mtge if subsistg; *Declon of trust of nominal revon of leasehd for A., &c.*, p. 30: AND THE Co do hby covt, &c., *to insure & repair, if required*, p. 42, *form* XXIX., *or* p. 45, *form* XXX., *mutatis mutandis;* [*Power of sale* (*a*), p. 20, *or* p. 26, *mutatis mutandis,* [*& clause as to sellg fixtures separately from the land*], p. 163, *note, the power not to be exercised* "until default shl have been made in paymt at maturity of some or one of the bills of exchange, the paymt whof is hby secd," *& omittg the rest of that clause; in the clause as to applicon of the pchase-moy say,* "in or towards paymt of such of the sd bills of exchange as shl have arrived at maturity, & in the next place; in case any of the sd bills shl not have arrived at maturity, shl pay into the Bank of Messrs ——, at ——, or some other bank to be selected by the sd A., his exs, ads, or assns, the residue of the sd moys, or so much thof as shl be sufft for the paymt of such last-mentd bill or bills, & shl from time to time apply the same moys in or towards paymt of such bills, or any of them at maturity, & then pay the surplus, if any, of the sd moys to the Co or their assns";] *Covt agst registron*, p. 50, *form* XXXVI.; [*Sale of leasehds by way of underlease*, p. 29, *form* XIV.]; *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

XXXIX.

PREC. XXXIX.

MORTGAGE *by a small* TRADER *of a* LEASEHOLD *house, with the* GOODWILL *and* TAKINGS *of his* BUSINESS, *to the trustees of a* LOAN *Society, the money to be repaid by* WEEKLY INSTALMENTS. VARIATIONS *where the* CASHIER *of the mortgagor is appointed* RECEIVER.

PARTIES, A., *mtgor*, 1; B. & C., *trees of the Socy*, 2; [D., *recer*, 3;] intd to be read as annexed or supplemental to an

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(*a*) As the statutory power of sale (as to which see p. 20, note), would in this case require some modification, it seems better to insert an express power.

PREC. XXXIX.

indre, &c., *the lease, see* p. 75, *note* (*c*), WITNETH that in conson of the sum of £—— this day advced to the sd A. by the sd B. & C. out of moys belongg to them on a jt acct (the rect whof the sd A. doth hby acknowe) the sd A. hby covts with the sd B. & C. to pay to them the sum of £——, *the ppal & intt,* within a term of —— weeks by eql weekly instalmts, the first of such instalmts to be pd on the —— day of ——, & the last of such instalmts to be pd on the —— day of ——; AND THIS INDRE ALSO WITNETH, &c., *demise of leasehds subjt to redmon as in Prec.* V.; AND THIS INDRE ALSO WITNETH that for the conson afsd the sd A. **as benefl owner** hby assns unto the sd B. & C. ALL THE goodwill & connon of the sd business of ——, now carried on by the sd A. in the sd messe & premes hinbfe demised, AND ALSO all moys to be recd by or to become owing to him the sd A. in respt of his sd business (*b*); *Habendum,* p. 14, *form* III.; *Provo for redmon,* p. 17, *form* II.; *Trust of nominal revon of leasehds & power of atty, &c.,* p. 30; *Covt to insure agst fire,* p. 42, *extendg to stk in trade, the moys receivable for loss of stk in trade to be applied,* "in or towards the paymt in advce of the sd weekly instalmts;" AND THE SD A. hby covts with the sd B. & C. that so long as any moys shl remain due on this secy he the sd A., his exs or ads, will keep pper books of acct of the sd business, & make full entries thrin of all the dealgs & transons of the sd business, & will keep such books & all lres, papers, & docts belongg or relatg to the sd business in the sd messe & premes, & will at any time when required produce the same for the inspon of the sd B. & C., their exs, ads, & assns, & allow them free access thto, & to make copies & extracts of & from the same: PROVD ALWAYS & it is hby agrd that if the sd A. shl die, or shl break or fail to observe any of the covts or

Witnesseth.

Covenant for payment by weekly instalments.

Further witnesseth.

Assignment of goodwill and takings of business.

Covenant to keep accounts, &c.

Proviso that whole mortgage

(*b*) An assignment of the future takings of the business would not be effectual in case of bankruptcy (*Ex parte Nichols,* 22 Ch. D. 782; *Wilmot* v. *Alton,* [1897] 1 Q. B. 17), except as to money already earned (*Ex parte Moss,* 14 Q. B. D. 310), or debts actually due, though not payable (*Re Davis,* 22 Q. B. D. 193), at the time of the assignment.

An assignment of future book debts is sufficiently defined, and passes the equitable interest in book debts incurred after the assignment, and, if not limited to book debts in any particular business, will be effectual as to book debts whether in the business carried on by the mortgagor at the time of the assignment, or in any other business (*Tailby* v. *Official Receiver,* 13 App. Cas. 523).

As to assignment of future book debts, &c.

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money shall become due in certain events.

agrmts on his pt hrin contd, or shl give or exte a bill of sale over any of his psonal chattels or effects, or a warrant of atty to enter up judgmt agst himself, or shl give any promissory note or accept or endorse any bill of exchange except in the ordinary course of business, or suffer any of his goods to be taken in exon or under a distress for rent, rates, or taxes, or shl, except on acct of illness, be absent from his sd business at any time for more than one week, or shl cease to carry on his sd business in the sd messe & premes hby mtged, or if the takings of his sd business in any one week shl be less than £——, then & in any of such cases the whole of the sd sum of £—— (*the total sum*) or the unpd pt thof shl become immedly payable & recoverable: *Clause extendg statutory power of sale*, p. 27, *form* VI. (*a*); [AND THE sd A., with the concurrce of the sd B. & C., doth hby irrevocably appt the sd D. to be the recer, agent, & atty of him the sd A. from time to time in the name of the sd A. to rece all moys becomg due to the sd A. in respt of his sd business from the pson liable to pay the same, & to use all lful means & do all things necy or pper for recoverg & obtaing paymt of the same as fully & effectually as the sd A. could do, & doth hby declare that the rect of the sd recer shl be an effectual dischge to all psons making such paymts; AND IT IS hby agrd that the sd recer shl out of the moys recd by him in each week pay the instalmt of the moys

Appointment of receiver.

Trusts of monies received.

As to mortgage of goodwill.

(*a*) Although "goodwill" may not be property within the C. A., 1881, the sale of the house under the statutory power would necessarily carry such part of the goodwill as attaches to the house (*Chissum* v. *Dewes*, 5 Russ. 29; *Pile* v. *Pile*, 3 Ch. D. 36), but not in a case where the goodwill depends upon the personal skill of the owner (*Cooper* v. *Met. Bd. of Works*, 25 Ch. D. 472). If material, a covenant may be inserted by A. "that he will not & that no wife or widow of his will within —— yrs after foreclosure or sale by the sd B. & C., their exs, ads, or assns of the leasehd premes hby mtged, eir alone or jtly, &c.," *covt not to carry on trade, Vol. I., p.* 592; *see Vol. I., p.* 31, *note.* As to the right of the vendor after the sale to solicit his former customers, see Vol. I., p. 342, note, and cases there referred to. As to the right of a mortgagee to use the trade name, see *Beazley* v. *Soares*, 22 Ch. D. 660. A receiver appointed at the instance of a mortgagee of property on which the mortgagor carries on business cannot be directed to manage the business unless the goodwill or business is in express terms or impliedly included in the security (*Whitley* v. *Challis*, [1892] 1 Ch. 64), distinguished: *Co. of Gloucester Bank* v. *Rudry Merthyr, &c., Co.*, [1895] 1 Ch. 629.

hby secd wch is payable at the end of that week, & all other moys owing under this secy, & any rent, rates, taxes, prems of insce, expses of repairs, or other paymts wch may be payable for maintaing this secy, & shl pay the surplus (if any) to the sd A.; *Covt by recer & provons for removal of recer & apptmt of new recer, & proton of mtgees from liability for his default, as in* pp. 54, 55]; [*Covt agst registron,* p. 50, *form* XXXVI.]; *Mtgee's indemnity clause,* p. 59. [*Clauses as to jt acct, & devolon of mtgee's powers if required,* pp. 37, 61.] IN WITS, &c.

XL.

MORTGAGE *of* SHARE *in a* PARTNERSHIP BUSINESS *to* SOLICITORS *for* COSTS *and* ADVANCES (*b*).

Parties.

PARTIES, A., *mtgor,* hinafter called the mtgor, wch expression shl include his exs, &c., 1; B. & C., solors in ptnp, hinafter called the mtgees, wch expression shl include their exs, &c., 2, *Recite ptnp articles of A.'s firm, showg the term of the ptnp,*

Recitals.

Mortgage by client to solicitor.

(*b*) See *ante,* p. 60, note (*b*). A solicitor may obtain a mortgage from his client for what is justly due to him (*Johnson* v. *Fesenmeyer,* 25 Beav. 88; 3 De G. & J. 13; *Pearson* v. *Benson,* 28 Beav. 598); and under the Attorneys and Solicitors Act, 1870, 33 & 34 Vict. c. 28, s. 16, he may take a mortgage for securing future costs, but the intention that it should extend to such costs should be very explicitly declared (see *Field* v. *Hopkins,* 44 Ch. D. 524, 528). As a mortgage for securing costs is not an ordinary mortgage transaction, but an arrangement for giving the client time for payment of a debt presently payable, it has been held that it is not incumbent on the solicitor in drawing up the mortgage to explain to the client such an unusual provision in the deed as a power of sale without notice (*Pooley's Trustee* v. *Whetham,* 33 Ch. D. 111), though where a solicitor advances money to his client in the ordinary way this must be done unless the client has independent professional advice (*Cockburn* v. *Edwards,* 18 Ch. D. 449).

Solicitor s lien.

Whether the solicitor by taking a mortgage for his costs abandons his lien depends on the intention, either expressed or to be gathered from the circumstances; but generally speaking, unless the solicitor has explained to his client that he intends to reserve the lien it will be lost (*Re Taylor, Stileman & Underwood,* [1891] 1 Ch. 590; *Re Douglas Norman,* [1898] 1 Ch. 198). A clause preserving the lien should be inserted where so intended. The principles and extent of a solicitor's lien are discussed in *Ackerman* v. *Lockhart,* [1898] 2 Ch. 1.

As to what provisions in a mortgage from a client to his solicitor are inadmissible as tainted with champerty, see *James* v. *Kerr,* 40 Ch. D. 449.

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& the provons as to capital & intt thron & profits. AND WHAS the mtgor is indebted to the mtgees in the sum of £—— for costs in respt of business done for & professional services rendered to him by the mtgees: AND WHAS the mtgor has applied to the mtgees to lend him the further sum of £—— to enable him to bring an addonal capital of £—— into his sd ptnp business, wch the mtgees have agrd to do on havg the repaymt of the sd sum of £—— owing to them for costs as afsd, as well as the sd sum of £—— to be advanced by them to the mtgor, with intt secd to them in mner hinafter appearg:

Mortgagor indebted for costs.

Agreement for loan.

Testatum.

NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— so owing to the mtgees for costs as afsd, & of the sum of £—— now pd by the mtgees out of their ptnp moys to the mtgor (the rect whof he doth hby acknowe), *covt for paymt of aggregate debt & intt after default to the mtgees*, pp. 9 & 10: AND THIS INDRE FURTHER WITNETH that in psuance, &c., & for the conson afsd, the mtgor doth hby assn to the mtgees ALL the este & intt of him the mtgor in the capital of the sd ptnp business of, &c., includg as well as the sd sum of £——, now standg to the credit of the sd mtgor in the books of the sd ptnp business as the sd sum of £—— so to be brought in by him as addonal capital as afsd: AND all such further sums of moy as may from time to time hrafter be brought into the sd ptnp business by the mtgor, whether by accumulon of profits or orwise, AND all the intt due & to grow due in respt of such capital, AND all the share & intt of him, the sd mtgor, in all & singr the debts, ppty, & effects of every descron, as well psnt as future, payable or belongg to the sd ptnp, TO HOLD the same unto the mtgees subjt to the provo for redmon hinafter contd, *Provo for redmon*, p. 17, *& mtgee's indemnity clause*, p. 59 (*a*). IN WITS, &c.

Assignment of share in partnership capital, &c.

(*a*) As to the right of the mortgagee to an account during the continuance of the partnership or on dissolution, see the Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 31.

As to mortgage of share in partnership.

A share in a partnership is a chose in action, and a mortgage thereof is there fore not affected by the reputed ownership clause in the Bankruptcy Act, or the Bills of Sale Acts, *Re Bainbridge*, 8 Ch. D. 218. As to the mode of realizing a security of this nature, see *Whetham* v. *Davey*, 30 Ch. D. 574; and as to the effect of a partner mortgaging his share, see Lindley on Partnership, pp. 364, 493, 583. Notice of the mortgage should be given to the firm.

XLI.

MORTGAGE *of* RENEWED LEASE *by reference to and annexed to a* PRIOR MORTGAGE *of the* SURRENDERED LEASE (*b*).

Parties, A. (hinafter called the mtgor), 1; B. & C. (hinafter called the mtgees), 2; Intd to be read as annexed or supplemental to an indre, dated, &c., & made, &c., being a mtge by the sd A. to the sd B. & C. of the premes comprd in an indre of lease, dated, &c., & made, &c.: WHAS by an indre bearg even date with & exted bfe these psnts, endorsed on the hinbfementd indre of lease of the —— day of ——, & made betn, &c., the sd lease has been surrendered to the sd X., in whom the revon of the premes comprd in the sd lease is now vested: AND WHAS by anor indre also bearg even date with & exted bfe these psnts, & made betn the sd X. of the one pt & the mtgor of the other pt, the messe or tenemt & premes comprd in the sd surrendered lease have been demised by the sd X. to the mtgor, his exs, ads, & assns, for the term of —— yrs from the —— day of ——, at the yrly rent of £——, & subjt to the covts on the pt of the lessee & condons thrin contd: AND WHAS the mtgees concurred in the surrender of the sd lease of the —— day of —— at the reqt of the mtgor, upon an agrmt that the renewed lease to be grted as afsd shd be assned to the mtgees by way of secy for the ppal moys owing to them under the sd indre of mtge of the —— day of —— & the intt thof, in substiton for the sd surrendered lease in mner hinafter appearg: *state of mtge debt*, p. 7: NOW THIS INDRE WITNETH that in conson of the mtgees havg made such surrender at the reqt of the mtgor as afsd, & of the premes, the mtgor **as benefl owner** doth hby assn unto the mtgees, ALL & SINGR the sd messe or tenemt & premes comprd in or demised by the hinbfe recited indre of lease, bearg even date with these psnts: TO HOLD the same UNTO the mtgees for the sd term of —— yrs grted by the hinbfe recited indre of lease of even date hwith,

Parties.
Recitals.
Surrender.
New lease.
Agreement.
State of mortgage debt.
Witnesseth.
Assignment.
Parcels.
Habendum to mort-

(*b*) As to the stamp on a substituted security, see the Stamp Act, 1891, Schedule, MORTGAGE. As to registered land, see p. 75, Prec. V.

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gagees as substituted security.

subjt to the like equity of redmon on paymt of the ppal moys & intt owing on the secy of the sd indre of mtge, & with the like power of sale & other provons for securg & obtaing paymt of the sd ppal moys & intt, & with the benefit of the like covts on the pt of the mtgor, & subjt to the like provons in all respts as are contd or implied in or conferred by the sd indre of mtge concerng the premes comprd in the sd surrendered lease, & by the sd indre of mtge assned to the mtgees, to the intent that the sd renewed lease of the sd premes may become in all respts substituted for the sd surrendered lease thof as a secy for the paymt of the sd sum of £—— & intt. IN WITS, &c.

XLII.

PREC. XLII.

MORTGAGE *under* SEAL *of* BONDS *and* SHARES *of* COMPANIES *incorporated under* SPECIAL ACTS *and* LIMITED COMPANIES, *some of the shares being fully and others partially* PAID-UP SHARES *in a* COSTBOOK MINING COMPANY *or other Company in which the* SHARES *are* TRANSFERABLE *without* DEED, *and* SCRIP *of a foreign* GOVERNMENT *loan and of an English* COMPANY, *for securing past and future* TRADE DEBTS.

Recital of debt and deposit of shares, &c.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2: WHAS the sd A. is indebted to the sd B. in sevl sums of moy, amtg to upwards of £—— for goods sold, moys advced, & orwise, & in order to induce the sd B. to continue his dealgs with the sd A. & for the ppose of securg the paymt of all such sums of moy as are or shl at any time hrafter be due & owing from the sd A., his exs or ads, to the sd B., his exs, ads, or assns, with intt for the same as hinafter mentd, the sd A. has transferred the bonds & shares mentd in the 1st schdle hto (*a*), to the sd B., & has

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Description of shares mortgaged.

(*a*) The shares in the 1st schedule are fully paid up; those in the 2nd schedule are liable to calls; and both those in the 1st and 2nd schedules are transferable by deed with or without registration. The shares in the 3rd schedule are transferable without any formal document; the scrip in the 4th schedule is scrip of a foreign loan, and is a negotiable instrument liable to deposited with the sd B. the certfcs, togr with transfers from him, the sd A., to the sd B., of the shares mentd in the 2nd schdle hto, but such transfers have not been exted by the sd B.

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forfeiture on non-payment of the remaining instalments, and when fully paid up is exchangeable for a bond of the government (see *Goodwin* v. *Robarts*, 1 App. Ca. 476); and the scrip in the 5th schedule is scrip of a company in which the scrip-holder does not acquire the rights of a sharehalder until his scrip has been exchanged for share-certificates and his name has been inserted in the company's register of shareholders.

Transfers in blank.

As to the effect of a sub-mortgage by a holder of blank transfers of shares, the blanks having been filled up by him for a purpose foreign to the original contract, see *France* v. *Clark*, 26 Ch. D. 257: *Easton* v. *London Joint Stock Bank*, 34 Ch. D. 95, reversed in House of Lords, *sub nom. Sheffield* v. *London Joint Stock Bank*, 13 App. Ca. 333. In *London Joint Stock Bank* v. *Simmons*, [1892] A. C. 201, reversing S. C. [1891] 1 Ch. 270, it was decided that a person taking a negotiable instrument in good faith and for value obtains a valid title though he takes from one who had none, and that the decision in *Sheffield* v. *London Joint Stock Bank* turned entirely upon the special facts of that case; and see *Bentinck* v. *London Joint Stock Bank*, [1893] 2 Ch. 120. See also as to transfers in blank and the rights conferred upon the holder for the time being, *Colonial Bank* v. *Hepworth*, 36 Ch. D. 36, and as to the issue of debentures in blank, *Re Queensland, &c., Co.*, [1894] 3 Ch. 181. As to the necessity of re-delivery by the transferor of the deed after the blanks have been filled up, to confer a legal title to the shares, see *Société Générale de Paris* v. *Walker*, 11 App. Ca. 20; *Powell* v. *London and Provincial Bank*, [1893] 2 Ch. 555.

Mortgage of shares, where mortgagor indebted to company.

As to a transfer of shares by way of mortgage, where the mortgagor is indebted to the Company, and the respective rights of the mortgagee and of the Company in such a case, see *Ex parte Harrison*, 28 Ch. D. 363; *Bradford Banking Co.* v. *Briggs*, 12 App. Ca. 29; *Miles* v. *New Zealand Alford Estate Co.*, 32 Ch. D. 266.

Priorities as to shares in company.

As to the effect of notice in determining the priorities of equitable rights with regard to shares in a Company, see *per* Ld. Selborne in *Société Générale de Paris* v. *Walker*, 11 App. Ca. 20, 30. As to priority as between an inchoate legal title created by a transfer, which has not been registered, and pre-existing equitable title, see *Roots* v. *Williamson*, 38 Ch. D. 485. As regards the rights created by a pledge of certificates of shares in an American railway, with blank transfers indorsed thereon, and as to the effect of American law and of mercantile usage, see *Williams* v. *Colonial Bank*, 38 Ch. D. 388; affirmed in D. P. *sub nom. Colonial Bank* v. *Cady & Williams*, 15 App. Ca. 267; *London and County Banking Co.* v. *London and River Plate Banking Co.*, 20 Q. B. D. 232. As to what is necessary to complete a transfer of shares so as to pass the legal interest therein, under the C. C. C. Act, 1845, see *Nanney* v. *Morgan*, 37 Ch. D. 346; *Powell* v. *London, &c., Bank*, [1893] 1 Ch. 610; [1893] 2 Ch. 555.

Mortgagee of railway shares entitled to foreclosure.

A mortgagee of railway shares which have been actually transferred to him, is entitled to foreclosure (*General Credit and Discount Co.* v. *Glegg*, 22 Ch. D. 549.

Bankruptcy

Shares in an incorporated Company transferable only by deed are "things in action" within the meaning of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44, sub-s. 3 (*Colonial Bank* v. *Whinney*, 11 App. Ca. 426). As to shares not being "in the possession, order, or disposition of a bankrupt in his trade or busi-

Witnesseth.

Covenant to pay present and future debts, with interest.

Proviso for redemption.

Mortgagor to hold shares in trust for mortgagee till registration of transfers.

Covenant by mortgagor to pay calls.

or registered, & the sd A. has exted & deposited with the sd B., transfers in blank of the shares mentd in the 3rd schdle hto, & has deposited with the sd B. the scrip certfes mentd in the 4th & 5th schdles hto, & has agrd to exte these psnts: NOW THIS INDRE WITNETH that in conson of the sd A. being indebted to the sd B, as afsd, & of the sd recited agrmt & premes, *covt by A. to pay on demand*, p. 12, to the sd B., his exs, ads, & assns, ALL & EVERY the sum & sums of moy wch are now or shl hrafter be due & owing from the sd A. to the sd B., his exs, ads, or assns, in respt of goods sold, advces made, or on any other acct whatsr, TOGR WITH intt for the same resply, after the rate of —— p.c. p.a., from the time or respive times of the same havg become due: PROVD ALWAYS, that if the sd A., his hrs, exs, ads, or assns, shl pay to the sd B., his exs, ads, or assns, all such sums & sum of moy as afsd with intt, psuant to the covt of the sd A. hinbfe contd, then the sd B., his exs, ads, & assns, shl at any time thrafter, upon the reqt & at the cost of the sd A., his exs, ads, or assns, retransfer & deliver up to him or them, or as he or they shl direct, all the sd bonds, shares, certfes, scrip, transfers & premes hinbfe mentd to have been resply transferred to & deposited with the sd B., or in case any of the sd scrip certfes shl have been exchanged for bonds or shares, then such bonds or shares, all wch premes are hinafter collectively called the sd mtged premes: AND IT IS HBY agrd that until the transfers of the sd shares specified in the sd 2nd & 3rd schdles shl have been resply completed & perfected by registron, so far as the same may be necy, the sd A., his exs & ads, shl stand possed thof in trust for the sd B., his exs, ads, & assns, subjt to such equity of redmon, if any, as shl for the time being be subsistg thrin by virtue of the provo for redmon hinbfe contd; *Power to appt new trees* "of the premes," p. 31, form II.: *Covt by A.*, THAT he, his exs or ads, will, durg the continuce of this secy,

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Act, 1883 as to shares in company.

Stamp.

ness" within the meaning of that section, see *ib.*, and *In re Jenkinson*, 15 Q. B. D. 441.

The security in the text, being under seal (which is necessary on account of the power of attorney to execute deeds, see Vol. I., p. 191, note, though not otherwise), is chargeable with the full 2*s.* 6*d.* per cent. mortgage duty; but if it were *under hand* only, and there was no power of sale it would be chargeable only with a 6*d.* agreement stamp, as a mortgage of stock and marketable securities (as defined by the Stamp Act, 1891, s. 122), see s. 23 and schedule, MORTGAGE OF STOCK. As to mortgages by *deed*, see s. 86 (1) (*g*).

duly & punctually pay all calls & instalmts that may be made or become due in respt of any of the sd mtged premes: AND THAT in default of his or their so doing, the sd B., his exs, ads, or assns may but shl be under no obligon to make such paymts, & that all sums pd by him or them for that ppose with intt for the same after the rate afsd, shl be repd by the sd A., his hrs, exs, or ads, on demand, & shl in the meantime be a chge on all the sd mtged premes: PROVD ALWAYS, that it shl be lwful for the sd B., his exs, ads, or assns, as well bfe as after the sd transfers of the sd shares specified in the sd 2nd & 3rd schdles shl have been completed & perfected as afsd, to rece all divids & bonuses becomg due thron: AND ALSO to exchange the scrip certfes mentd in the sd 4th & 5th schdles for the bonds or shares for wch the same may resply be exchangeable: AND ALSO at any time or times hrafter, *continue power of sale*, p. 26, *addg at the end of the clause givg the authority to sell, the words* "expressly includg the complon & registron of the sd transfers of the sd shares mentd in the sd 2nd & 3rd schdles or any of them, or the filling in of the name or names of any pson or psons as transferee or transferees in the sd transfers of the sd shares mentd in the sd 3rd schdle or any of them, & the delivery of the sd scrip certfes or any of them to any pson or psons," *omittg the clauses as to events in wch power is to be exercised, the provo for proton of pchasers, & the trusts of the pchase-moy:* PROVD ALWAYS, that no Co, pchaser, or other pson payg any moys, whether on sale or orwise, to, or havg any dealgs with the sd B., his exs, ads, or assns, in respt of any of the sd mtged premes, shl be bound to enquire whether any moys remain due on this secy, or orwise as to his or their rt to rece such moys or the regularity of any such sale, or other dealg, or be affected by any irregularity thrin; *Trusts of moy to be reced*, p. 40, "in respt of any of the sd mtged premes, whether upon a sale or orwise;" *Covt by A. for further assurce*, p. 65, *mutatis mutandis, saying*, "for effectually vestg the sd mtgd premes or any of them in the sd B., his exs, ads, or assns, or any pchaser or pchasers from him or them, & for enablg the sd B., his exs,

Power to mortgagee to pay calls.

Power to mortgagee to receive dividends.

To exchange scrip certificates.

Power of sale (*a*).

Proviso for protection of purchasers.

Covenant by mortgagor for further assurance.

(*a*) Assuming this to be a "mortgage" within the C. A., 1881, the statutory power of sale and receipt clause and trusts of monies received (ss. 19, 22, see pp. 20, 21, notes) might to some extent be relied on; but as the provisions are in this case somewhat special, express clauses are inserted.

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ads, or assns, at any time or times hrafter, while any moy shl remain due on the secy of these psnts, to rece any sums of moy becomg due or receable eir for ppall or for intt, divids, or bonuses, in respt of any of the sd mtged premes: AND FURTHER, that he the sd A., his exs, ads, or assns, will, if required by the sd B., his exs or ads, permit all or any of the shares specified in the sd 2nd & 3rd schdles, to be revested in him or them, the sd A., his exs, ads, or assns, in such mner as the sd B., his exs, ads, or assns, shl think fit: AND WILL indemnify the sd B., his exs & ads, agst all costs & liabilities wch may be incurred or sustained in respt of any of the sd mtged premes: *Mtgee's indemnity clause*, p. 59: AND LASTLY, in conson of the premes the sd A. doth hby irrevocably (*a*) appt the sd B., his exs, ads, & assns, to be the atty & attys of the sd A. in his name or orwise to rece & give rects for all or any moys becomg due or receable in respt of any of the sd mtged premes, & to exte & do all such transfers & things as are hby covted to be exted & done by the sd A. (*b*). IN WITS, &c.

To permit shares to be revested in him.

For indemnity.

Power of attorney.

[*Five Schdles*].

XLIII.

PREC. XLIII.

MORTGAGE *of* FREIGHT *and* EARNINGS *of, and* POLICIES *of Insurance on, a* SHIP, *to accompany a* STATUTORY MORTGAGE (*c*).

PARTIES, A. (hinafter called the mtgor, wch expression shl include his exs, ads, & assns, where the context so admits), 1;

(*a*) See the C. A., 1882, s. 8, p. 30, note.

(*b*) Notice of this deed should be given to the Companies whose shares are included in the second and third schedules (except companies registered under the Act of 1862, see s. 30, or under an Act incorporating the Company Clauses Act, 1845, see s. 18), in order that the security may be effectual as against any subsequent transferees or incumbrancers, but as shares are not within the reputed ownership clause in the Bankruptcy Act, 1883, s. 44, sub-s. iii. (see above, p. 173, note) notice is not necessary as against the mortgagor's trustee in bankruptcy.

(*c*) Mortgages of ships are now regulated by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 31—38; and as to the right and liabilities of mortgagees of ships under the repealed Merchant Shipping Act of 1854, and

B. (hinafter called the mtgee, wch expression shl, &c., *as above*), 2: WHAS the mtgor is the regrd owner of the British ship —— of the port of ——; AND WHAS the sd ship is about to proceed on a voyage to —— & back to the United Kingdom [under a charter pty, dated, &c., & made, &c.]; AND WHAS the mtgor has, by a policy of insurce, dated the —— day of ——, & effected with Messrs. K. & Co., insured the sd ship & freight in the sum of £——; *Agrmt for loan*, p. 1, "upon havg the repaymt thof, with intt, at the rate of —— p.c. p.a., secd by a statutory mtge, & upon havg the repaymt of the sd ppal moys & intt further secd, & the repaymt of all the other moys, chges, & intt hinafter mentd, secd in mner hinafter appearg:" AND WHAS, by a statutory mtge, bearg even date with these psnts, under the hand & seal of the mtgor, & intd to be registered at —— afsd, the mtgor in conson of the sum of £—— this day lent to him by the mtgee, has covted with the mtgee, *recite covt for paymt of £—— & intt*, & for better securg the repaymt in mner afsd of the sd ppal sum & intt, the mtgor has thby mtged the sd ship to the mtgee [& in the sd mtge is contd a provo that the statutory power of sale shl not be exercised until the sd —— day of ——]: NOW THIS INDRE WITNETH, that in further psuance of the sd agrmt, & in conson of the premes, the mtgor,

Recitals: title of mortgagor.

Intended voyage.

Insurance.

Agreement for loan.

Statutory mortgage.

Witnesseth.

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the Amendment Acts of 1855 and 1862, see *Hutchinson* v. *Wright*, 25 Beav. 444; *European, &c., Co.* v. *Royal Mail, &c., Co.*, 4 K. & J. 676; *Wilson* v. *Wilson*, L. R. 14 Eq. 32; *Liverpool, &c., Company* v. *Wilson*, L. R. 7 Ch. 507; *Bell* v. *Blyth*, L. R. 4 Ch. 136; *The Orchis*, 15 P. D. 38; and under the present Act, *Black* v. *Williams*, [1895] 1 Ch. 408; 2 Dav. Prec., Part II., pp. 206 and 233; see also the Digest to the Law Reports, tit. SHIP-MORTGAGE. As to the meaning of "freight," see Goodeve, P. P., p. 112. As to the effect of omitting to register a mortgage, see *Keith* v. *Burrows*, 2 App. Ca. 636; as to mortgages of unfinished ships, see *Ex parte Hodgkin*, L. R. 20 Eq. 746. Under the Bills of Sale Acts, 1878 and 1882 (41 & 42 Vict. c. 31, s. 4; 45 & 46 Vict. c. 43, s. 3), transfers, assignments, or mortgages of a ship or vessel (which includes a barge, *Gapp* v. *Bond*, 19 Q. B. D. 200; and comprises, in the case of a mortgage, articles necessary to the navigation of a ship or to the prosecution of the adventure which were on board at the date of the mortgage, and articles subsequently brought on board in substitution for them: *Coltman* v. *Chamberlain*, 25 Q. B. D. 328), or any share thereof, are not required to be registered as bills of sale. They are also exempt from stamp duty under the Stamp Act, 1891, Sched. GENERAL EXEMPTIONS FROM ALL STAMP DUTIES (2); but the exemption does not extend to the above mortgage of freight, &c. As to fees in respect of mortgages of ships, see Vol. I., pp. 885, 886, note. As to the assignment of marine policies, see 31 & 32 Vict. c. 86; notice of the assignment is not necessary.

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Assignment of freight.
Charter-party.
Policy.
Habendum.
To mortgagee.
Proviso for redemption.
Covenant by mortgagor that mortgagee may collect the insurance money.
Not to vitiate policy.
To effect new policy if present policy vitiated.
To insure.

as benefl owner, doth hby assn unto the mtgee, ALL THE freight, passage-moys, & earngs of the sd ship, or any shares or share thof, on the now intd, or any voyage: AND ALSO [the sd charter pty, &] all future charter pties, contracts, & agrmts in relon to the sd ship, or the freight, passage-moys, or earngs thof: AND ALSO the sd policy of insurce, & all & every psnt or future poly or pols of insurce on the sd ship, or her apptmts, or any shares or share thrin, or on the freight, passage-moys, or earngs thof, or any pt or pts thof, & all moys insured by or to become payable under the sd pols, or any of them, & the full benefit & advantage thof; TO HOLD the same premes UNTO the mtgee, subjt to the provo for redmon hinafter contd: PROVD ALWAYS, & it is hby agrd, that if the mtgor shl on the —— day of —— next pay to the mtgee the sd ppal sum of £—— & intt intd to be secd by the sd statutory mtge, & shl also on demand pay to the mtgee all the expses, prems, commissions, chges, moys, & intt hinafter covted to be pd by the mtgor to the mtgee, then & in such case the mtgee shl at any time thrafter, upon the reqt & at the cost of the mtgor, reassn the sd premes hinbfe assned to the mtgor, or as he may direct: AND THE mtgor doth hby covt with the mtgee that in the event of the sd ship being lost or sustaing or being liable to contribute to or pay for any loss, the mtgee may collect the amt insured in respt of the sd ship or her freight or earngs, or pd by the underwriters, for the benefit of whom it may concern: AND FURTHER, that neir the mtgor nor any pson to whom the sd ship [is or] may be chartered nor their respive servants will do or suffer anything whby the psnt or any future poly of insurce on the sd ship or the freight, passage-moys, or earngs thof may be vitiated or become void, or the mtgee may be prevented from recevg or recoverg the moy thby assured, or any pt thof: AND THAT if the sd poly or pols shl be or become vitiated or void the mtgor will immedly, at his own cost & chges, do all such things as may be necy for effectg a new poly or new pols, & keepg the same on foot & vestg the same in & in the posson of the mtgee in lieu of & in substiton for such poly or pols as may have become vitiated or void as afsd: AND FURTHER, that the mtgor will at all times, durg the continuce of this secy, keep the sd ship & the freight, passage-moys, & earngs thof insured with Messrs. K. & Co., or some other underwriters or insurce office or offices to be approved of by the mtgee, in the sum of £—— at the least [with the usual collision clause, & includg war risks]: AND THAT every poly so effected, &c., *to be subject to secy,* p. 41, *for* "origl poly," *say* "poly hby mtged:" AND THAT the mtgor will durg the continuce of this secy pay all such prems & moys as may be payable in order to keep the sd ship, freight, passage-moys, & earngs so insured; *Power to mtgee to pay prems,* p. 41: AND THAT all moys, chges, & expses, wch shl be pd or incurred by the mtgee in respt of the sd ship, freight, or insurces on ship, freight, passage-moys, or earngs, or orwise in the exon of the trusts or powers of these psnts, *with intt to be repd by mtgor on demand, & in the meantime to be a chge,* p. 41, *on,* "the sd ship, & all the sd premes hby mtged:" AND FURTHER, that the mtgor will, durg the continuce of this secy, pay or allow to the mtgee, in addon to all discounts reced by him on insurce or disbursemts, all usual & customary commissions & chges for business wch may be pformed by the mtgee or any firm in wch he may be a member on acct of the mtgor in relon to the sd ship or any shares or share thrin, in the same mner as if he had not been a mtgee of the sd ship: AND THAT the mtgor will from time to time in writg apprise the mtgee of all or any informon or intelligce wch he may rece concerng the sd ship immedly on the rect thof: AND in conson of the premes the mtgor doth hby irrevocably (*a*) appt the mtgee to be his atty in his name & on his behalf to demand, sue for, enforce paymt of, & rece & give effectual rects & dischges for the freight, passage-moys, & earngs hby mtged, *to prosecute & defend legal pcdgs, Vol. I.,* p. 187, *saying,* "or any other mres relatg to affectg the sd ship," *to arrange & compromise, Vol. I.,* p. 187, *substitute for,* "or any other mres, &c.," "or any claims or mres now subsistg or hrafter arisg in relon to the sd ship," AND to appt & dischge the master, officers, & crew of the sd ship, & genlly to act in & about the premes as fully & effectually to all intents & pposes as if the mtgee had been the absolute owner of all the sd mtged premes, *to appt substitutes, Vol. I.,* p. 189, *ratificon, Vol. I.,* p. 190: PROVD ALWAYS, & it is hby agrd, that it shl be lful for the mtgee or any pson or psons authorised by

New policy to be subject to security.

To pay premiums.

Moneys paid to be a charge.

That mortgagor will pay mortgagee's business charges.

To give information.

Power of attorney.

Power to mortgagee to take possession.

(*a*) See the C. A., 1882, s. 8, p. 30, note.

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him, at any time after the —— day of ——, witht any further consent of the mtgor, to enter upon & take posson of the sd ship whether at sea or in port, & whether abroad or at home, & to navigate the sd ship, & also to detain her at any port where she may be, & also to remove her from any port to any other port for sale: [(*a*) AND ALSO to sell all or any of the sd premes hby mtged, eir togr or septely, & eir togr with the sd ship or any share or shares thof, *continue*, p. 26, *form* II.; *in the clause as to events in wch power is to be exercised, say,* "neir the power of sale hrin contd nor the statutory power of sale of the sd ship shl be, &c.;" *in the clause as to applicon of pchase-moys, say,* "out of the pchase-moys on any sale, whether under the power hrin contd or the sd statutory power, & out of the moys (if any) reced by him in respt of the sd freight, passage-moys, earngs, pols, & premes hby mtged;" *Rect clause,* p. 39, *as to,* "any moys pd to the mtgee in respt of any of the sd mtged premes;"] PROVD ALWAYS that the mtgee shl not be answerable for any involuntary losses wch may happen in or about the exercise or exon of the powers of sale or any other powers or trusts arisg under the Merchant Shippg Acts or these psnts. IN WITS, &c.

To sell.

Mortgagee's indemnity clause.

XLIV.

PREC. XLIV.

AGREEMENT *to accompany* STATUTORY MORTGAGE *of a* SHIP. VARIATIONS *where* MORTGAGOR *and* MORTGAGEE *are* FIRMS. *Short form.*

Parties. Recitals. Statutory mortgage.

AGRMT made the —— day of ——, BETN A. (hinafter called the mtgor (*b*)) of the one pt, & B. (hinafter called the mtgee (*b*)) of the other pt: WHAS by a mtge in the statutory form bearg even date hrwith 64 64ths of the —— of —— have

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(*a*) The clauses here bracketed might perhaps be omitted, as they are for the most part, though not entirely, provided for by the C. A., 1881, ss. 19—22, see pp. 20, 39, notes.

(*b*) Where the parties are firms, say "mtgors" and "mtgees," and make consequential alterations throughout, insert clause IX., and omit clause X.

been transferred by the mtgor to the mtgee by way of mtge to secure the genl balce of the acct current of the mtgor with the mtgee: AND WHAS, for further securg the paymt of the sd genl balce of acct current, the pties have agrd to enter into this agrmt: NOW IT IS HBY AGRD AS FOLLOWS:

Agreement.

I. THE MTGEE may at any time at his discron (if he shl deem it necy so to do for better secy, & although no moys may be immedly due or payable to him by the mtgor) enter into & retain the posson of the sd ship, & employ the same in any trade or for any voyage or voyages eir as a genl ship or on hire or charter, & demand & rece the freight & earngs thof, & his rect shl be a good & valid dischge for the same.

Power to mortgagee to take possession.

II. SO LONG as any moy shl remain due to the mtgee the sd ship shl not proceed on any voyage or voyages witht his consent in writg first obtd, & (if he think fit to exercise this power) he shl have the nominon of the master of the sd ship, & the mtgor undertakes from time to time to remove any master of whom the mtgee shl not approve, & to appt any master nominated by the mtgee.

As to voyages and nomination of master.

III. THE MTGEE undertakes not to require paymt of the balce of his acct current, or exercise the power wch is given by the Merchant Shippg Acts, to sell the sd ship, until after the —— day of ——, except in case of the bkptcy, or suspension of paymt of or by the mtgor, or of a receivg order being made agst him, or his compoundg or arrangg with his creditors, or of the breach by him of any of the clauses hrin contd, & for the pposes of this clause the dishonour of any bill of exchange accepted by the mtgor shl be deemed to be a suspension of paymt by him.

Money not to be called in before a day named.

IV. IN CASE any of the events mentd in the last precedg clause shl happen, & the mtgee shl think fit to require paymt of the balce of his acct current, a demand of paymt shl be deemed to be sufftly made, if in writg addressed to the mtgor, & served on him personally, or left for him at his last-known place of business in ——.

As to demand of payment.

V. THE MTGEE shl have power to buy in at any auction, & to rescind any contract for sale witht being responsible for any loss.

Mortgagee may buy in at sale.

VI. THE MTGOR will at all times durg the continuce of this secy insure & keep insured the sd ship & her freight [with the usual collision clause, & includg war risks] in the sum of £—— at the

Mortgagor to insure.

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least, & with such insurce offices or underwriters as the mtgee shl require, & will from time to time deliver the origl stamped pols duly endorsed to the mtgee; & in case of default eir in insurg or keepg insured, or in deliverg the stamped pols duly endorsed as afsd, it shl be lful for (but not obligatory on) the mtgee to insure & keep insured the sd ship & her freight, or eir ship or freight, in such amts as he shl think pper, & in case of the loss of, or damage to, the sd ship, the mtgee shl have power to recover & rece all insurce moys, & give good & valid dischges for the same, & to compromise claims or to refer the same to arbitron as he in his discron shl think pper.

As to matters to be included in account current.

VII. ALL BILLS of exchange, whether current or overdue, bearg the name of the mtgor & held by the mtgee, commission as agrd upon, & all chges & expses wch the mtgee may incur or pay by reason of the dishonour or renewal of any bill of exchange, & also all expses incident to the insurce or the takg & keepg posson or the sale of the sd ship, togr with intt at the rate from time to time agrd upon on all amts pd or advced by the mtgee, shl form items in the acct current betn the pties, & be secd by the sd statutory mtge & these psnts, & the sd ship shl not be redeemed or redeemable until full paymt or satisfon of the same.

Mortgagor to execute further assurances.

VIII. THE MTGOR will, on reqt, exte & do any further assurce or act for more effectually assng & makg over the sd ship & her freight & earngs & all pols thron, to the mtgee, wch may be reasbly required.

Proviso for change in firm.

IX. [THE SECY made by the sd statutory mtge & these psnts shall not be affected by reason of any change in the pson or psons constitutg the firm of —— or ——, eir by the death or retiremt of any ptner, or the accession of any new ptner.]

X. [*Interpreton clause*, p. 61.] IN WITS, &c.

XLV.

SUB-MORTGAGE (*a*) *of* FREEHOLDS *and* LEASEHOLDS *by way of* COLLATERAL SECURITY (*b*).

Recitals.

Agreement.

Witnesseth.

Assignment of mortgage debt.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2: *Recite the lease, settg out the pcels, & devolon of title* (*if any*) *to the origl mtgor, as in a convce on sale, see Vol. I.*, pp. 364, 366, *the mtge to the psnt mtgor, above* p. 5, *settg out the covts for paymt of ppal & intt, the convce of the freehds & leasehds, & provo for redmon, the declaron of trust* (*if any*) *of the nominal revon, & noticg the power of sale* (*if any*) *& any provo, such as a provo for the redon of intt on punctual paymt, relatg to the terms of repaymt of the loan; State of mtge debt*, p. 7; *The ppal secy for the psnt loan bearg even date, & containg covt for paymt of ppal & intt:* AND WHAS upon the treaty for the sd loan of the sd sum of £—— secd by the sd recited indre of even date hrwith, it was agrd that the paymt thof, togr with the intt thron as afsd, shd be further secd in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance of the recited agrmt & in conson of the sum of £—— so advced by the sd B. to the sd A. as afsd, the sd A., **as benefl owner,** doth hby assn unto the sd B. ALL THAT the sd ppal sum of £—— so owing as afsd to the sd A. upon the secy of the hinbfe recited indre of the —— day of ——, & all intt now due & henceforth to become due for the same, AND the benefit of the power of sale & all powers & provons conferred by or contd in the sd last mentd indre, AND ALL other secs for the same ppal sum &

Use of sub-mortgage.

(*a*) A sub-mortgage should be used in preference to a transfer of part of a mortgage debt, as if a transfer of part only of a mortgage debt is made without the concurrence of the mortgagor and his subsequent incumbrancers the original mortgagee and the transferee must concur in foreclosure, on the ground that the mortgagor or subsequent incumbrancer ought not to be harassed by a multiplicity of actions.

Enquiries and notices.

Before completion the sub-mortgagee should enquire from the original mortgagor as to the state of accounts between him and the original mortgagee, and after completion should give him notice of the sub-mortgage.

Trustees.

As to trustees investing on a sub-mortgage, see *Smethurst* v. *Hastings*, 30 Ch. D. 490.

(*b*) As to the stamp on a collateral security, see the Stamp Act, 1891, Sched. MORTGAGE; 2 Dav. Prec., Pt. II., p. 532, note. When the registered proprietor of a charge creates such a charge, see *ante*, p. 2, note.

Habendum.
To mortgagee.
Further witnesseth.
Grant.
Freehold parcels.
Habendum.
To use of mortgagee.
Further witnesseth.
Assignment.
Leasehold parcels.
Habendum.
To mortgagee.

intt (*a*), To HOLD the same premes UNTO the sd B., subjt to the provo for redmon hinafter contd: AND THIS INDRE ALSO WITNETH that in psuance of the sd agrmt, & for the conson afsd, the sd A., **as benefl owner,** doth hby grt unto the sd B., ALL & SINGR the sd hds & premes comprd in & grted by the hinbfe recited indre of the —— day of ——, To HOLD the same premes UNTO & TO THE USE of the sd B., his hrs & assns, subjt to such rt or equity of redmon as the same premes are now subjt to by virtue of the hinbfe recited indre of the —— day of ——, & subjt to the provo for redmon hinafter contd: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd, the sd A., **as benefl owner,** doth hby assn unto the sd B. ALL & SINGR the sd hds & premes comprd in & demised by the hinbfe recited indre of the —— day of —— [with the benefit of the trust & provons contd in the sd indre of mtge of & concerng the sd nominal revon thby reserved], To HOLD the same premes UNTO the sd B. for the residue now to come & unexpired of the sd term of —— yrs grted by the sd recited indre of mtge, of, &c. [& for all the este & intt of the sd A. in the sd nominal revon thby reserved] subjt to such rt or equity of redmon as the same premes are now subjt to by virtue of the sd last mentd indre, & subjt to the provo for redmon hinafter contd;

Proviso for redemption.

Provo for redmon, p. 17, *form* IV., *saying,* "reassn & reconvey the sd mtge debt & intt & freehd & leasehd premes hby assned & grted resply, to the sd A., his hrs, exs, ads, & assns, resply, subjt nevs as to the sd freehd & leasehd premes to such rt or equity of redmon as shl be subsistg thrin resply by virtue of the hinbfe recited indre of the —— day of ——;"

Mortgagee's receipt clause (*b*).

PROVD ALWAYS that the rect of the sd B., his exs, ads, or assns, for the sd ppal sum of £——, *the origl mtge debt,* & intt or any pt thof, or for the pchase-moy of the premes sold on any exercise of the power of sale contd in the hinbfe recited indre of the —— day of ——, or any pt thof resply, shl effectually dischge the pson or psons paying such moys from the same, *continue rect clause,* p. 39:

Trusts of monies to be received (*b*).

Trusts of moys to be reced under origl mtge, p. 40, *saying,* "shl rece any moys in or towards satisfon of the sd ppal sum of

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(*a*) As to inserting a power of attorney, see p. 39, note, and form XXIV.

(*b*) These two clauses might probably be omitted in reliance on the statute, see p. 39, note; but it seems better to insert them.

£——, *the origl mtge debt,* or any intt thron, whether on any sale under the power of sale contd in the hinbfe recited indre of the —— day of ——, or orwise, he or they shl by & out of the same," &c.: PROVD ALWAYS, & it is hby agrd that it shl not be incumbent on the sd B., his exs, ads, or assns, to enforce or realise the hinbfe recited secy, or to take any steps or pcdgs for that ppose unless he or they shl think fit, & he or they shl not be answerable or responsible for any loss occasd by any delay or omission in any such respt; *Mtgee's indemnity clause,* p. 59. IN WITS, &c. (*c*).

Proviso that mortgagee need not realise.

XLVI.

MORTGAGE *by a* TRUSTEE *in* BANKRUPTCY *so as to create a* FLOATING CHARGE *on the* PROPERTY *of the* BANKRUPTS *to a* BANK *advancing money for an* INTERIM DIVIDEND (*d*).

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PARTIES, A., "the tree of the ppty of B. & C., bkpts hinafter called the tree," 1; The —— Bank, Limd, hinafter called the bank, 2: WHAS B. & C., tradg as B. & Co., were duly adjudicated bkpts on the —— day of —— 18—: AND the tree was duly appted & on the —— day of —— (*e*) became the tree of the ppty of the bkpts: AND WHAS by a resolon duly passed by the committee of inspecton in the sd bkcy on the —— day of —— 18—, the tree was permitted to borrow from the bank such sums of moy as are hinafter mentd upon the terms hinafter appearg: AND WHAS the bank at the request of the tree made with such permison as afsd have agrd to lend to him such sums of moy as are hinafter mentd upon havg, *continue agrmt to loan,* p. 1; NOW THIS INDRE WITNETH that in psuance &c., & in conson of the premes it is hby agrd as follows:

(*c*) The power of sale is omitted, as the statutory power applies, see the C. A., 1881, s. 19, p. 20, note.

(*d*) See the Bankruptcy Act, 1883, ss. 56, 57. This deed is a mortgage of part of the estate of the bankrupts, and consequently is exempt from stamp duty except in respect of fees under the Act. Bankruptcy Act, 1883, s. 144.

(*e*) *I.e.*, the date of the certificate of the Board of Trade: Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 21 (4).

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I. SUBJT to the necy authorison by the Board of Trade being obtained psuant to s. 74 of the Bkcy Act, 1883, the tree shl as soon as possible after the signg of this agrmt open with the bank a bankg acct in the name of the debtor's este, and the bank shl as & when so required by the tree place to the credit of the sd acct such sums as the tree shl in writg certify to be necy and sufft to enable the tree, with any moys wch for the time being may be in his hands as such tree, to provide for paymt of the priority debts, the costs of administron, & for an immediate distribon amongst the unsecured jt credors of the bkpts of a sum eql to 6*s.* 8*d.* in the pound on the amounts of their unsecd proveable debts.

II. ALL sums payable to the tree by the bank under this agreemt shl be placed to the credit of the sd acct, & all sums wch, in the ordinary course of the administron of the jt este of the sd bkpts, wld be pd by the tree to the credit of the acct of the sd este in the bkcy estes acct, shl be pd by the tree into the sd bankg acct.

III. ALL moys standg to the credit of the sd bankg acct or orwise reced by the tree in the ordinary course of administron of the sd jt este, shl be applied by the tree, subjt to any special orders of the ct wch may be made in relon to any such sums of moy, first in paymt of the priority debts & the costs of administron, & in distributg amongst the unsecured jt credors of the bkpts a sum eql to 6*s.* 8*d.* in the pound on the amts of their unsecd proveable debts, & next in repaymt to the bank of the sums so advced by them with intt thron, as from the dates of the same being advced at the rate followg, that is to say, so long & so often as the bank rate of intt shl not be less than £2 p.c. p.a., at the rate of £1 p.c. p.a. over such bank rate, but so long & so often as the bank rate of intt shl be less than £2 p.c. p.a., at the rate of £3 p.c. p.a.

IV. As secy for the repaymt of all sums of moy to be advced by the bank under this agreemt & intt thron, & the pper costs, chges, & expses of the bank in respt of such advces, the tree as tree hby chges all the jt ppty of the bkpts, wch, under the order of adjudicon, has become or may hrafter become, vested in the tree (save so much thof as consists of psonal chattels to wch the Bills of Sale Acts 1878 & 1882 apply), but subjt to all the costs & expses of the collecton & realison thof, with the repaymt to the bank of all ppal sums wch they shl advce under this agrmt, togr with intt at the rates aforesd, & the pper costs, chges, & expses of the bank as mtgees, & agrees that in the event of the bank becoming entled to enforce the chge hby created, but not bfe that time, he the tree will, as & when required by the bank, exte to the bank or as they shl direct, all such assnmts & instrumts with all necy powers of atty & powers of sale, as havg regard to the nature of the ppty hby made a secy for repaymt of such advces, intt, costs, chges, & expses shall be necy to give the bank a legal title to such ppty or any pt thof, or if the intt of the tree in such ppty or any pt thof shl be equitable only, to vest such equitable intt in the bank as mtgees thereof.

V. The chge hby created shl constitute a floatg secy on the assets of the sd jt este, & so long as the tree shl duly pay into the sd bankg acct all sums reced by him wch under this agrmt shl be payable into such acct, & shl duly make all the paymts required by this agrmt, to be made by him as tree as afsd, & render such accts as to his rects & paymts in the matters afsd as the bank shl reasbly require, & give the informon hinafter covted to be given by the tree & fulfil all other obligons imposed upon him by this agrmt, the bank shl not before the —— day of —— hinder the tree in the managemt & administron of the ppty of bkpts & the distribon thof amongst their credors psuant to the Bkcy Acts, & so long as the tree shl make no default in makg such paymts, renderg such accts, givg such informon, & performg such obligons, he shl be permitted to continue in uncontrolled posson of the sd jt este until the sd —— day of ——, & this chge shl not be enforceable against the sd jt este before the —— day of ——, unless & until such default as afsd shl be made by the tree: PROVD THAT the tree shl not be at liberty to create any mtge or chge upon any of the ppty included in this agrmt in priority to the chge hby created.

VI. Nothing hrin contd shl render the tree psonally liable to repay to the bank the sd advce & intt or any pt thof or any of the sums wch under this agrmt are to be pd to the bank, & the bank shl for the repaymt of the sd advce, intt, & sums of moy have recourse only to the jt este of the bkpts.

VII. The obligons imposed on the tree under this agrmt are psonally bindg on him only so far as the pformance thof is con-

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sistent with the provons of & obligons imposed on the tree by the Bkcy Acts & Rules.

VIII. The tree hby covts with the bank to keep the bank informed of all the pcdgs in the bkcy, & in parlar to keep them informed of all that shl take place in the realizon of the assets & of any proposed compromises or arrangemts with the debtors to the bkpts este : AND IT IS HBY provd that the tree shl not carry into effect any such compromise or arrangemt to wch the bank shl object.

IX. THE tree hby undertakes with the bank that durg the continuce of this secy the annl premiums or other sum or sums of moy, if any, necy for keepg up the pols specified in the schdle hto wch form pt of the ppty hby chged, shl be duly pd out of the jt este of the sd bkpts as & when the same shl become due or within 14 days thrafter, & that the receipt for every such paymt shl forthwith be produced to the bank or their assns, all of wch paymts as & when made shl be deemed to be pt of the costs of administron payble by the tree hrunder, & that if any such paymt shl not be so made it shl be lful for the bank or their assns to pay the same, & the moys so pd & the costs of makg such paymt togr with intt thron at the rate afsd from the time or times of the same havg been pd or incurred until paymt to the bank or their assns shl be chged on the ppty hby chged in favour of the bank or their assns.

X. IN the constron of these psnts the follg expressns shl, unless the context orwise requires, have the meangs hinafter assned to them : "tree" includes not only the sd A., but the tree for the time being of the ppty of the bkpts; "the priority debts" means all sums wch under the preferential paymts in Bkcy Act, 1888, are payble in priority to all other debts of the bkpt; "costs of administron" means all the paymts wch by Rule 125 of the Bkcy Rules, 1886, are reqrd to be made out of the ppty of a debtor before the same is applied in paymt of debts or divds, & any sums payble out of the jt este of the bkpts under any order of the ct or under the Bkcy Acts & Rules made thrunder. IN WITS, &c.

[*The schdle above refd to.*]

XLVII.

MEMORANDUM *under* SEAL *to accompany* DEPOSIT *of* DEEDS *with* AGREEMENT *to* EXECUTE *a formal* MORTGAGE (*a*).

PREC. XLVII.

KNOW ALL MEN, that I, A., *mtgor*, of, &c., do hby declare that the title deeds [land certificates] and writgs relatg to the hds situate in the parish of —— & coy of ——, known as the —— este, a short description of wch is contd in the first schdle

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(*a*) This and the next five Precedents are forms of equitable mortgages accompanying a deposit of deeds or other documents of title. As to equitable mortgages, see 2 White & T., L. C. Eq. notes to *Russel* v. *Russel;* see also pp. 81 and 82, note.

Form.

The above precedent is under seal as it contains a power of attorney to execute deeds (see Vol. 1, p. 191, note), and also in order that the mortgagee may have the powers of sale and insuring and appointing receivers conferred by the C. A., 1881, ss. 19, *et seq.;* see above, pp. 20, 42, and 52, notes; but the latter object might (it is conceived) be attained by a clause expressly incorporating the statutory provisions.

Rights of *cestui que trust.*

The rights of the *cestui que trust* prevail over the rights of an equitable mortgagee, without notice of the trust, where the security is created by deposit by a trustee in breach of trust, *Manningford* v. *Toleman*, 1 Col. 670; but it appears that a trustee registered as proprietor of land or a charge can by depositing the land certificate, office copy of registered lease, or certificate of charge, create a lien on the land or charge in favour of the depositee free from the rights of his *cestui que trust*, L .T. A., 1897, s. 8 (4), unless those rights are protected by an inhibition or possibly by a caution.

Registered land.

The registered proprietor of any freehold or leasehold land or of a charge may, subject to any registered estates, charges, or rights, create a lien on the land or charge by deposit of the land certificate or office copy of registered lease, or certificate of charge; and such lien shall, subject as aforesaid, be equivalent to a lien created by the deposit of title deeds or of a mortgage deed of unregistered land by an owner entitled in fee simple or for the term or interest created by the lease for his own benefit, or by a mortgagee beneficially entitled to the mortgage, L. T. A., 1897, s. 8 (4).

The words "subject to any registered charges or rights" create some difficulty. Probably it will be held that "registered rights" means rights protected by an entry on the register. If this view is correct, the lien created by a mortgage by deposit will not override rights protected by a restriction or inhibition, or a lease protected by notice; and accordingly where a tenant for life is registered as proprietor, and a proper inhibition is entered on the register, the lien created by the deposit by him of the land certificate will only affect his life estate; except where by statute he can mortgage the fee (*e.g.*, S. L. A., 1882, s. 18), in which case if the mortgage money is paid to the proper person the deposit will probably create a lien on the fee.

The question how far rights protected by a caution only have priority over the lien created by the deposit of the land certificate is one of greater difficulty. Probably, if the intending depositee searches the register and finds a caution, he will be deemed to have notice of the rights of the cautioner, and will therefore be postponed to him. It is by no means clear what will be the effect of a

PREC. XLVII.

hto, & a list of wch deeds & writings is contd in the second schdle hto, have been deposited by me with B., *mtgee*, of, &c., to secure to the sd B., the repaymt of the sum of £—— this day adved by him to me with intt thron payable half-yrly at the rate of £—— p.c. p.a. until repaymt: And I do hby, **as benefl owner**, chge the sd este & hds [and all other, if any, the hds belongg to me, or over wch I have any disposg power, to wch the sd deeds [land certfe] and writgs or any of them relate] with the repaymt of the sd sum of £—— & intt: And I undertake that I, my hrs, exs, or ads will, when required, at my or their own cost, exte & deliver to the sd B., his exs, ads, or assns, an effectual legal or formal mtge [regrd chge] of the sd este & premes in such form & with such covts by me, my hrs, exs, or ads, & such powers of sale and other powers & provons as the sd B., his exs, ads, or assns, may require for further

Charge.

Agreement to execute mortgage (*a*).

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caution of which the depositee has no notice, possibly it will be held that his negligence in not searching postpones him.

The result is that the intending depositee ought to make the same searches as if he intended to take a registered charge.

The depositee may give notice in writing (which may be by registered letter) to the Registrar of the deposit; the registrar is to enter the notice in the charges register and give a written acknowledgment of its receipt; the entry on the register is to operate as a caution; so long as the notice is in force no new certificate is to be issued without notice to the person by whom the notice was given, the notice can be withdrawn on the written request signed and attested by the person lodging the notice, or his successor in title, or (where such person consents in writing) on the like request of the registered proprietor of the land, accompanied in either case with the land certificate, office copy registered lease, or certificate of charge, L. T. R., 200 to 202.

Further advance.

We have now to consider the effect of the depositee making a further advance. So long as he retains the land certificate, no entry, except of a caution, can be made on the register without his knowledge. The mere entry of a caution is not notice to the depositee; consider the cases on the Middlesex Registry Acts, *Bedford* v. *Backhouse*, 2 Eq. Ca. Ab. 615; *Williams* v. *Sorrell*, 4 Ves. 389; and therefore he will not be affected by the rights of the cautioner till he has express notice of them. The result appears to be that the depositee is entitled to add to his security further advances made by him notwithstanding that a caution has been entered after the original advance, but that a cautioner can obtain priority over the subsequent advance by giving notice to the depositee.

Where the land is not registered the depositee should enter a caution against first registration.

As to agreement to execute legal mortgage.

(*a*) See as to the effect of an agreement to execute a legal mortgage, *Maxfield* v. *Burton*, L. R. 17 Eq. 15; *Garnham* v. *Skipper*, 34 W. R. 135; an "effectual" mortgage, *Spencer* v. *Clarke*, 9 Ch. D. 137. As to specific performance of an agreement to execute a mortgage, see *Stead* v. *Nelson*, 2 Beav. 245; *Hermann* v. *Hodges*, L. R. 16 Eq. 18. As to the protection afforded to a person, who, though without the legal estate, has the best right to call for it, see Dart, V. & P., p. 935, cases in note (*o*).

secure the paymt of the sd ppal moys & intt (*b*): And I hby irrevocably appt the sd B., his exs, ads, & assns, to be my atty or attys, for me & in my name & on my behalf, & as my act & deed or orwise, to sign, seal, & deliver & orwise perfect any such legal or formal mtge [regrd chge] as afsd or (witht executg any such mtge) any deed, assurce, or act wch may be required or may be deemed pper on any sale by him or them of the sd hds & premes, or any pt thof, under the power of sale conferred by these psnts & the statute in that behalf in order to vest in the pchaser or pchasers the legal este & all other my este & intt in the sd premes: And I declare that I, my hrs, exs, ads, & assns shl henceforth stand seised & possed of the hds hby chged in trust for the sd B., by way of further secy for the paymt of the sd ppal moys & intt: And I declare that it shl be lful for the sd B., his exs, ads, & assns by deed to appt a new tree or new trees of the sd hds, and in parlar at any time or times to appt a new tree or new trees thof in the place of myself, or my assns or any tree or trees appted under this power as if I or they were dead (*d*): [*Covt agst registron*, p. 50, *form* XXXVI.; [And I further undertake to pay all costs & expses incurred by the sd B., his exs, ads, or assns, in respt of the premes, includg the cost of investigatg the title to the sd mtged premes & of stampg this deed, & I agree that all such costs & expses may be added to this secy (*e*)]: As WITS my hand & seal this —— day of ——.

Power of attorney to convey legal estate on a sale (*c*).

Declaration of trust.

Power to appoint new trustees.

Provision as to costs.

[*Two Schdles.*]

As to inserting power of attorney.

(*b*) The authorities of the Inland Revenue do not allow an equitable mortgage under hand only which contains an agreement to execute a legal mortgage, to be stamped at the lower rate. But this view appears to be incorrect, as a mortgage by deposit operates as an agreement to grant a mortgage, *Parker* v. *Housefield*, 2 M. & K. 419.

(*c*) This power should be inserted, since an equitable mortgagee by deed who sells under the statutory power of sale cannot convey the legal estate vested in the mortgagor (*Re Hodson*, 35 Ch. D. 668). The power is made irrevocable by the C. A., 1882, s. 8, and would have been so even before that Act, see *Abbott* v. *Stratten*, 3 J. & L. 603; but the effect of the Act where the property has been dealt with or the mortgagor has died, seems doubtful; see p. 30, note.

(*d*) Probably the insertion of this clause in an equitable mortgage under hand only would render it liable to duty at the higher rate. A vesting declaration in a deed appointing a new trustee vests the legal estate in him, notwithstanding that a legal mortgage has been made to a person having notice of the deposit: *London & County Banking Co.* v. *Goddard*, [1897] 1 Ch. 642.

As to stamping.

(*e*) As to costs, see *National Provincial Bank of England* v. *Games*, 31 Ch. D. 582. An agreement by the mortgagor to pay the penalty on stamping after the

XLVIII.

PREC. XLVIII.

MEMORANDUM *under* SEAL *to accompany the* DEPOSIT *of* DEEDS, *and* AGREEMENT *to* EXECUTE *a* MORTGAGE, *to secure an* ACCOUNT CURRENT *with* BANKERS (*a*). VARIATIONS *where the Deeds are deposited by a* SURETY (*b*).

KNOW ALL MEN, that I, A., *mtgor,* of, &c., do hby declare that the title deeds [land certfces, office copies of registered leases] & writgs, a list of wch is contd in the schdle hto, relatg to the hds situate, &c., known as, &c., have been delivered & deposited by me to & with B., C., & D., of ——, carrying on business as bankers & co-ptners, *or,* "the —— Bankg Co, Limd," for securg to them or to the psons or pson for the time being carrying on the sd bankg business, their or his respive exs, ads, or assns, *or,* "to the sd Co," the paymt of all such sums of moy [not exceedg £—— (*c*)] as are now due, or shl from time to time be due to them or him from me my exs or ads [from K., of, &c., *the pson whose debt is to be secd,* his exs or ads], eir on acct current, or for moy advced or pd, or in respt of bills, drafts, or notes accepted, pd or discounted, intt, commission, or any other usual or lful chges, or on any other acct whatsr, togr with all costs & expses wch may be incurred in respt of the premes: And I do hby, **as benefl owner**, chge all the sd hds & premes [& all other hds, if any, belongg to me, or over wch I have any disposg power, to wch the sd deeds [land certfces, &c.] & writgs or any of them relate] with the paymt of all moys due or to become due as afsd: *Agrmt as in last Prec* (*d*), *to exte a mtge* [regrd chge] *to,* "the sd B., C., & D., or to the psons or pson for the time being carryg on the sd bankg business, their or his respive exs, ads, & assns," *or,* "the sd —— Bankg Co, Limd," *for secg,* "the paymt on demand of all such moys as afsd, with intt for the same at the rate of —— p.c. p.a.:" And I do hby declare that the sd B., C., & D., or other the psons or pson afsd, their

Charge.

Power to bankers to grant time to principal

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proper time cannot be enforced (Stamp Act, 1891, s. 117); and this would be so without that enactment, see *Abbott* v. *Stratten*, 3 J. & L. 603.

(*a*) See Precedent XXXVII., and p. 79, note.

(*b*) See the notes to the last Precedent.

(*c*) This bracket limits the charge, *Re Bowes*, 33 Ch. D. 586.

(*d*) See note, p. 190.

or his respive exs, ads, or assns, *or*, "the sd —— Bankg Co, Limd," may grt time or other indulgce to or compound with [the sd K., his exs or ads or] any other pson or psons liable on any bill, note, or other secy witht dischging or affectg this secy :] AND I further agree that all divids, composons, & paymts reced from [the sd K., his exs or ads or] any such other pson or psons as afsd, shl be taken & applied as paymts in gross, & that this secy shl extend to any ultimate balce wch shl remain due as afsd (*e*) : [PROVD ALWAYS, & it is exply stipulated that this secy & the liability of me, my exs & ads hrunder, shl be limd to the sum of £—— ;] *Provon as to costs as in last Prec.* AS WITS, &c.

PREC. XLVIII.

debtor and to drawers, &c., of bills.

The security to extend to ultimate balance.

[*Schdle.*]

XLIX.

EQUITABLE MORTGAGE *under* HAND *only*, CHARGING *land* (*f*).

PREC. XLIX.

To A. B., of ——, Esq.

I, C. D., of ——, Esq., do hby chge the hds descd in the schdle hto, [*or*, in the deeds, [land certificate *or* office copy, registered lease] mentd in the schdle hto], with the paymt to you on the —— day of —— next, of the sum of £——, now pd by you to me, as I do hby acknowe, with intt thron in the meantime at the rate of £—— p.c. p.a. (*g*), & also with the

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(*e*) Add if desired power of attorney, declaration of trust, and power to appoint new trustees and covenant against registration, *ante*, p. 191, *mutatis mutandis*.

(*f*) In order that a mortgage under hand only may be liable to duty at the lower rate it must be "an agreement or memorandum under hand only, relating to the deposit of title deeds or instruments constituting or being evidence of title to any property whatever (other than stock or marketable security) or creating a charge on such property," Stamp Act, 1891, s. 86 (2). Where, however, the equitable mortgage under hand only contains provisions such as a power of sale, or other provisions, which put the mortgagee nearly in as good a position, except as to being able to convey the legal estate, as if he had taken a legal mortgage, the mortgage becomes liable to duty at the higher rate under s. 86 (1), (e).

That an equitable mortgagee by deposit of title deeds is not entitled to six months' notice or six months' interest in lieu of notice before being paid off, see *Fitzgerald's Trustee* v. *Mellersh*, [1892] 1 Ch. 385 ; but the mortgagor is entitled to six months for redemption, *Parker* v. *Housefield*, 2 M. & K. 419.

(*g*) *For further advances* say, "& also with the paymt to you on

PREC. XLIX.

paymt on the —— day of —— & —— day of —— in every yr of intt at the rate afsd on the ppal moys for the time being due on this secy.

Dated the —— day of ——.

Signed, C. D.

[*The Schdle.*]

L.

PREC. L.

MEMORANDUM *under* HAND *only, to accompany a* DEPOSIT *of* DEEDS (*a*).

To A., of ——, Esq.

I, B., of ——, Esq., hby declare that I have deposited the munimts of title specified in the schdle hto with you to secure the repaymt to you on demand of the sum of £——, now lent by you to me (the rect whof I hby acknowe), togr with intt thron at the rate of —— p.c. p.a., from the date of these psnts until paymt.

Dated this —— day of ——.

Signed, B.

[*The Schdle.*]

LI.

PREC. LI.

MEMORANDUM *under* HAND *only, to accompany* DEPOSIT *of* DEEDS *to secure an* ACCOUNT CURRENT *at a* BANK.

To Messrs. A. B. & Co. [the X Bankg Co., Limd.]

I, C. D., of ——, Esq, do hby chge [my life intt in] the hds descd in the schdle hto [*or*, in the deed descd in the schdle

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such —— day of —— or —— day of —— as shl happen next after the same resply shl be advanced, of every other sum wch may hrafter be advanced by you to me with intt at the rate afsd from the time of the same being so advanced." See note p. 189.

(*a*) In Yorkshire a memorandum in writing should accompany every charge by deposit and should be registered. *Battison* v. *Hobson*, [1896] 2 Ch. 403.

hto] with the paymt to you on demand of the balce wch on my acct current with you shl for the time being be owing in respt of bills, notes, or drafts acceptd, pd, or discounted, or advces made to or for my use or accommodon, & for intt, commission, or other usual bankers chges or orwise, togr with intt on the sd balce from the time of such demand being made or left till the time of paymt, at the rate of —— p.c. p.a. PREC. LI.

Dated this —— day of ——, 18—.

Signed, C. D.

[*The Schdle.*]

LII.

MEMORANDUM *under* HAND *only, to accompany the* DEPOSIT *of* MISCELLANEOUS SECURITIES *to secure the payment of* BILLS *of* EXCHANGE *at maturity.*

PREC. LII.

To Messrs. A. & Co.

WE, B., C., & D., trading under the firm of B. & Co, hby declare that we have deposited with you the docmts mentd in the first schdle hto, to sece the paymt at maturity of each & all of the Bills of Exchge specified in the second schdle hto.

Dated the —— day of ——.

Signed, B. & Co.

[*Two Schdles.*]

LIII.

EQUITABLE CHARGE *by deed of an* UNDIVIDED SHARE *in* HEREDITAMENTS *for securing* SEVERAL SUMS *advanced by* THREE *separate* PERSONS (*b*).

PREC. LIII.

PARTIES, A., *mtgor*, 1; B., C., & D., *mtgees*, 2; *Recite title of mtgor; Agrmt for loan*, p. 4, *form* III.: NOW THIS Witnesseth.

(*b*) See the notes to Precedent XLVII.; and see the precedent of a contributory mortgage, p. 106, and the note thereto.

PREC. LIII.

Further witnesseth.
Charge of share.
With repayment.
Covenant to execute mortgage (*b*).
Proviso that loans shall rank equally.

INDRE WITNETH that in conson of the sd sevl sums of £——, £——, & £——, now pd by the sd B., C., and D., resply to the sd A. (the rect of wch three sevl sums, makg the total sum of £——, he doth hby acknowe), the sd A. doth hby, &c., *covt for paymt*, p. 11, *form* VI. NOW THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd, the sd A., **as benefl owner**, doth hby chge ALL THAT one-fourth pt or share, & all other the pt or share & intt (if any) of him the sd A., of & in the messes, tenemts, & hds, &c., & the appurts thof, WITH the repaymt to each of them the sd B., C., & D., of the sum so lent by him as afsd, with intt thron after the rate afsd psuant to the covt hinbfe contd (*a*) : AND THE sd A. doth hby covt with each of them the sd B., C., & D., that he the sd A., his hrs, exs, or ads, will at his or their own costs when reqted so to do by any of them the sd B., C., & D., or the exs, ads, or assns of any of them, exte such mtge of the pt or share & intt hby chged of & in the sd hds, with such covts by the sd A., his hrs, exs, or ads, & such power of sale & other powers & provons as the pson or psons makg such reqt shl reasbly require for the better & further securg the repaymt of all the sd moys & intt : PROVD ALWAYS, & it is hby agrd that the sd three sums of £——, £——, £——, & the intt thron, shl be chgeable upon & raiseable & payable out of the sd share & premes hby chged thwith, eqlly, & witht any preferce or priority betn themselves. IN WITS, &c.

LIV.

PREC. LIV.

WARRANT *of* ATTORNEY *with* DEFEASANCE *as* COLLATERAL SECURITY *for Money secured upon* MORTGAGE (*c*).

TO —— & ——, Solors of the Supreme Ct of Judicature in England jtly & sevlly, or to any other solor of the same Ct.

Warrant of attorney.

THESE ARE to desire & authorise you, the solors above-

(*a*) Add if desired declaration of trust, p. 191, substituting A. for I., and power to appoint new trustees.

(*b*) See p. 190 note.

Use of warrant of

(*c*) Occasionally it is wished to place the creditor in the position of a judgment creditor, so as to enable him to obtain speedy execution. This named, or any of you, or any other solor of the Supreme Ct afsd, to appear for me, A., *mtgor*, of, &c., in the Queen's Bench Divon of the High Ct of Justice, in an action agst me for the sum of £—— for moy lent at the suit of B., *mtgee*, of, &c., his exs or ads, & thrupon to confess the same action, or else to suffer a judgmt to pass agst me in the same action, & to be thrupon forthwith entd up agst me of record in the same ct for the sd sum of £——, togr with costs of suit: And I do hby further authorise & empower you the sd solors, or eir of you, after the sd judgmt shl be entd up as afsd for me & in my name, & as my act & deed, to sign, seal, & exte a good & sufft rele to the sd B., his hrs, exs, & ads, of my rt to appeal agst the sd judgmt, & of & from all errors, defects, & imperfons made, done, or suffered, or to be made, done, or suffered, in or about any writ of exon issued for the ppose of enablg the sd B., his hrs, exs, ads, or assns, to recover or enforce payment of the sd moys or any pt thof. And for what you the sd solors, or eir of you, shl do or cause to be done in the premes, or any of them, this shl be to you & each of you a sufft warrant & authority: And I have exply named ——, of

To confess judgment.

To execute release of right of appeal.

Nomina-

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is effected by the mortgagor giving to the solicitors of the mortgagee an authority, called a warrant of attorney, usually but not necessarily under seal, to enter up judgment in an action to be brought by the mortgagee against the mortgagor for a specified amount, generally twice the amount of the loan, and defeasance specifying the use to be made of the judgment. The warrant of attorney is void, unless it is attested by a solicitor on behalf of the person giving the warrant expressly named by him and attending at his request to inform him of the nature and effect of the same before execution, who in the attestation declares himself to be his solicitor, and subscribes himself as such solicitor, 32 & 33 Vict. c. 62, s. 24 (re-enacting 1 & 2 Vict. c. 110, s. 9), and unless the warrant or a true copy is filed in the Central (Bills of Sale) office within 21 days after execution with an affidavit of the time of execution, 3 Geo. 4, c. 39, s. 1, 32 & 33 Vict. c. 62, s. 26, and unless the defeasance (if any) is written on the same paper or parchment as the warrant before the latter is filed, 32 & 33 Vict. c. 62, s. 26. A warrant not executed as prescribed by statute is not rendered valid by proof that the person executing it did in fact understand its nature and effect, or was fully informed of the same, 32 & 33 Vict. c. 62, s. 25. As to the use of warrants of attorney as a means of raising money by incumbents of benefices, see 2 Dav. Prec., part 2, p. 25, note. As to the stamp on a warrant of attorney, see the Stamp Act, 1891, Sched., "MORTGAGE." As to the fixed costs, on taxation, of judgment on a warrant of attorney, see R. S. C. 1883, Order 65, r. 27, sub-s. 38, and Practice Masters' Rules (18). As to filing a warrant of attorney for the purpose of signing judgment, see Practice Masters' Rules (25).

attorney and defeasance.

PREC. LIV.

tion of attesting solicitor.

——, gentleman, a solor of the Supreme Ct afsd, & reqted him to attend on my behalf, to inform me of the nature & effect hrof bfe the same is exted, & to witness the due exon hrof by me: And I acknowe that the sd —— has accdly attended & informed me of the nature & effect hrof bfe such exon.

In wits whrof, I have hrunto set my hand & seal, this —— day of ——.

The above-written warrant of atty to confess judgmt was signed, sealed, & delivered by the above-named A., in the presce of me, ——, of, &c., one of the solors of the Supreme Ct. And I hby declare myself to be the solor for & on behalf of the said A., exply named by him and attendg at his reqt, & that I informed the sd A. of the nature & effect of the above-written warrant of atty bfe the same was exted; And I also declare that I subscribe my name as such solor.

DEFEASANCE *to be indorsed on the Warrant of Attorney for collaterally securing mortgage monies.*

Recite the mtge, p. 5.

Warrant of attorney to be a collateral security for mortgage debt.

Execution not to be issued until default in payment of debt or performance of covenants.

Power to issue exe-

Now be it known, that the within-written warrant of atty is given as a further or collateral secy for the moys secd by the hinbfe recited indre of mtge; And, accdly, that no exon shl be issued upon the judgmt to be entd up by virtue of the within-written warrant of atty, unless or until the power of sale vested in the sd B., his exs, ads, or assigns, under the sd indre of mtge shl have become exercisable [or some intt under the sd indre shl be in arrear & unpd for fourteen days after becomg due, or there shl be a breach of some covt on the pt of the sd A in the sd indre of mtge contd other than the covt for paymt of the ppal sum & intt thby secd]; But in case any such event as afsd shl happen, then & so often as the same may happen, it shl be lful for the sd B., his exs, ads, or assns, to issue or cause to be issued exon upon the said judgmt for such sum or sums of moy as he or they shl require to be levied & raised in order to repay to himself or themselves the moys for the time being due on the secy of the sd indre, or any pt thof resply: Togr with costs of judgmt as betn solor & client, includg thrin the cost of registerg writ of exon (*a*), sheriff's poundage, & officer's fees of keepg posson, auctioneer's chges, expses of sale, expses of applying to the ct or a judge for leave to issue exon when six yrs (*b*) shall have elapsed since the judgmt or any change shl have taken place by death or orwise in the pties entled or liable to exon, & all other incidental chges & expses whatsr: And the moys to be reced from time to time upon any such exon shl be applied by the said B., his exs, ads, or assns, in or towards paymt of the moys for the time being due on the secy of the said indre, or orwise, accdg to the circes, so as to render the sd warrant of atty & judgmt a sufft, effectual, & complete collateral secy for the ppal moys & intt (*c*) secd by the sd indre of mtge, & all incidental costs & expses.

cution in case of default.

For principal debt or interest or other sums required for indemnity.

With costs of judgment, &c.

Application of moneys levied under judgment.

LV.

PREC. LV.

DEED *of* FURTHER CHARGE (*d*) *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *the* INTEREST *being* REDUCIBLE *on punctual payment, by* ENDORSEMENT *on the original mortgage.* VARIATIONS *for several* MORTGAGEES, *and where the further charge is by* SUPPLEMENTAL *or by*

(*a*) See Land Charges, &c., Act, 1888 (51 & 52 Vict. c. 51) s. 5.

(*b*) See R. S. C., 1883, Order 42, rule 23.

(*c*) As to whether the judgment will not prejudice the mortgagee's right to subsequent interest at the rate reserved by the mortgage, see *Ex parte Fewings*, 25 Ch. D. 338; *Arbuthnot* v. *Bunsilall*, W. N. 1890, 37; 62 L. T. 234: distinguishing *Popple* v. *Sylvester*, 22 Ch. D. 98.

(*d*) As to deeds of further charge see 2 Dav. Prec., part 2, 756; Elph., Introd. Conv., 215, *et seq.* As to the effect of a further charge by an assignee of the equity of redemption on the mortgagee's right to sue the original mortgagor for the original debt, see *Kinnaird* v. *Trollope*, 39 Ch. D. 636; 32 Sol. J. 717.

Further charge by assignee of equity of redemption.

As to the stamps on further charges, see the Stamp Act, 1891, Schedule, "MORTGAGE," and previous to that Act, see 2 Dav. Prec., pt. 2, p. 258, note.

Stamps.

PREC. LV.

INDEPENDENT *deed. Also, where there has been a* PREVIOUS *further advance, and where the deed is to secure* PRESENT *and* FUTURE *further* ADVANCES (*a*).

Recitals.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2. *Condonal surrender of copyholds*, p. 6; *State of mtge debt, p.* 7; *form* XIII. *or* XIV.:

Variations for supplemental deed.

(*a*) A further charge should, whenever convenient (which is not usually the case where the parties have separate solicitors), be endorsed on the mortgage, as in the text; otherwise it may, to save recitals, be made supplemental or annexed to the mortgage (see C. A., 1881, s. 53, Vol. I., p. 617, note), in which case the following may be added after the "pties"; "intd to be read as annexed, *or* 'supplemental,' to an indre dated, &c., being a mtge for securg the paymt of the sum of £—— & intt to the sd B., if there has been a previous further charge, add: "& to anor indre dated, &c., being a further chge for securg the paymt, &c." If there has been a transfer, the further charge may be annexed in like manner to the transfer. It may be convenient to distinguish each prior deed by a short designation, by saying "hinafter called the mtge," or "first further chge," or "transfer." Matters contained in the mortgage or other prior deeds may be referred to as "recited," or "contd," or "mentd," in the "mtge," or as the case may be.

Ditto for independent deed.

If the further charge is by independent deed, it will begin by reciting the lease and devolution (if any) of title thereto to A., as in a conveyance on sale, see Vol. I., pp. 364, 366, the mortgage, setting out the covenant for payment of principle and interest, the conveyance and proviso for redemption, and the trust (if any) of the nominal reversion of the leaseholds for the mortgagee, above, p. 5, with the words in the final brackets; and subsequently for "within written," and "within mentd," &c., say "hinbfe recited," or "hinbfe mentd," &c.

Ditto for several mortgagees.

For a mortgage to trustees or others lending on a joint account, the advance will be expressed to be paid by them "out of moys belonging to them on a jt acct"; and the joint account clause added if deemed proper at or near the end of the deed, see p. 37. The other alterations will be merely the substitution of the plural.

Ditto for present and future further advances.

If the charge is to extend to future advances, the recital of the agreement for the loan will be as at p. 4, form IV., the future advances being expressed to be, if desired, "not exceedg (inclusive of such sum) £——." The covenant for payment of present and future advances and interest thereon after default, will be as at p. 10, form V. If the charge is to extend to future advances, add: "& also of such further sum or sums as may be hrafter advced or pd by or become owing to the sd B., his exs, ads, or assns [not exceedg, &c.] with intt thron from the time of the same resply being advced or pd or becomg owing accdg to the covt hinbfe contd & shl not be redeemable until paymt to him or them of as well the sd sum of £——, *psnt advce*, &

Agrmt for further advce, p. 7: NOW THIS INDRE WITNETH, that in psuance, &c., & in conson, *of the fresh advce*, p. 9, *form* I., *covt for paymt of the sum now adveed*, p. 9, *on the next half-yrly day for paymt of intt on origl mtge; & intt after default*, p. 10: AND THIS INDRE ALSO WITNETH that in psuance, &c., & for the conson afsd, the sd A., **as benefl owner**, doth hby declare that ALL & SINGR the hds & premes comprd in the within-written indre & thby mtged, SHL be a secy for & chged with the paymt to the sd B., of as well the sd sum of £——, *the origl mtge debt*, & all intt due & to grow due for the same, as the sd sum of £——, *the new advce* & the intt thron accdg to the covt hinbfe contd, & shall not be redeemable until paymt to him or them of both the sd sums of £—— & £——, & the intt thron resply: *Covt by A. with "B.," to surrender copyhds*, p. 72, *subjt to a condon for makg void the surrender on paymt of the new advce with intt from the date of the psnt deed*, p. 73; *Declaron of trust of copyhds till surrender, & power of atty*, p. 30: AND IT IS HBY further agrd that the provon in the within-written indre contd for reducg the intt on the within-mentd sum of £——, to the rate of —— p.c. p.a. (*b*) shl extend & apply to the ppal moys & intt secd by these psnts in the same mner as if the same provons were hrin repeated with respt to the sd sum of £——, *the new advce*, & the intt thron: AND that the [power of sale (*c*) & provons ancillary thto, & other] powers & provons in the within-written

Witnesseth.
Covenant for payment.
Further witnesseth.
Agreement.
Parcels.
To be a security for further advance.
Covenant to surrender copyholds.
Proviso for reduction of interest to extend to new advance.
Powers in mortgage

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intt as such further sum or sums as afsd & intt & the sd sum of £——, *origl debt*, & intt." The other consequential alterations in the subsequent clauses will be obvious.

Registered land.

A further charge on registered land will be made by registered charge.

(*b*) If there has been a previous further charge, say here, "& wch provons are by the sd, *first further chge*, extended & applied to the sd sum of £——, *the amt thby secd*, & intt, shl also."

As to statutory power of sale, &c.

(*c*) Where the statutory power of sale (as to which, see p. 20, note), is relied on in the mortgage, it will not generally be necessary to refer to it in the further charge, as it will continue to apply without express incorporation; and if the statutory power is modified by a provision in the mortgage, it will continue to apply, subject to such modification, without being expressly mentioned, by virtue of the clause in the text, extending all the provisions of the mortgage to the further advance. But the terms of the further advance may of course be such as to render some special extension or modification of the statutory power necessary, which must be effected by a separate clause. These remarks apply also to the statutory powers of insurance and appointing receivers, as to which see pp. 42, and 52, notes.

Prec. lv.

deed to extend to further advance.

indre contd for securg paymt of the sd sum of £——, & the intt thron (*a*). shl extend & apply for further securg the paymt of the sd sum of £——, *the new advce*, & intt in like mner as if the last-mentd sum had formed pt of the ppal moy secd by the within-written indre. *Covt agst registrn of freehds & leasehds*, p. 50, *form* xxxvi.; *Mtgee's indemnity clause*, p. 39. In wits, &c.

LVI.

Prec. lvi.

DEED *of* Further Charge *of* Freeholds, Copyholds, *and* Leaseholds, *the original* Mortgage *having been* Transferred, *the rate of* Interest *and half-yearly days of* Payment *being* Altered *and* Additional Freeholds *being added to the security* (*b*).

Recitals.

Parties, A., *mtgor*, 1; B., *mtgee*, 2. *Recite lease, &c., mtge, & condonal surrender of copyhds, as in last Prec.; Transfer to B., see Vol. I.*, p. 361, *mutatis mutandis; condonal surrender to B. on the occasion of the transfer*, p. 6; And whas satisfon of the sd condonal surrender of the —— day of —— (*i.e. the original surrender*) was on the —— day of —— entered up on the Ct rolls of the manor of wch the sd copyhd hds are held; *State of mtge debt*, p. 7; *Title of A. to addonal freehds, Vol. I.*, p. 370.

Agreement.

And whas the sd B. has agrd to lend to the sd A. the further sum of £——:

Consolidation of original and new advance.

And whas upon the treaty for the sd loan it was agrd that the sd sum of £—— now due on the secy of the hinbfe recited indre of mtge, & the sd sum of £——, *the new advce*, shd be consold into one ppal sum of £——, & that intt shd be hrafter payable on the sd aggregate ppal sum at the rate of ——, in lieu of the hinbfe mentd rate of —— p.c. p.a., & that the paymt of the sd aggregate sum of £—— & intt shd be secd in mner hinafter appearg:

Witnesseth.

NOW THIS INDRE WITNETH, that in psuance, &c., & in conson of the sum of £—— now owing by the sd A. to the sd B. upon the secy of the hinbfe recited indre of mtge as afsd, & of the further sum of

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(*a*) If there has been a previous further charge, say here, "& wch are by the sd *first further chge*, extended & made applicable for the ppose of further securg the sd sum of £——, *the amt thby secd*, & intt, shl also."

(*b*) See the variations in the last Precedent.

£—— now adveed by the sd B. to the sd A. (the rect, &c.), *covt for paymt of aggregate debt with intt at new rate*, p. 9, *& for paymt of intt at new rate after default*, p. 10; AND THIS INDRE ALSO WITNETH that in psuance, &c., & for the conson afsd it is hby agrd & the sd A., **as benefl owner,** doth hby declare that ALL & SINGR the freehd & leasehd hds & premes comprd in & mtged by the hinbfe recited indre of, &c., *the mtge*, & wch were by the hinbfe recited indre of, &c., *the transfer*, grted & assned to the sd B., his hrs, exs, ads, & assns resply, SHL henceforth be dischged from the equity of redmon subsistg thrin by virtue of the same indres, or eir of them, but shl be subjt to the provo for redmon hinafter contd: AND THIS INDRE ALSO WITNETH, that in further psuance, &c., and for the conson afsd, the sd A., *grt by A.*, **as benefl onwer** *of new freehds to B. in fee subjt to redmon*, p. 14; *Provo for redmon*, p. 17, *form* IV., *of*, "all such pts of the hds & premes comprd in the hinbfe recited indres of, &c., *the mtge & transfer*, as are of freehd tenure, & the hds hinbfe grted," *&*, "of all such, &c., as are of leasehd tenure," *on paymt of the consold loan with intt*: AND THIS INDRE ALSO WITNETH, *Covt by A. with B. to surrender copyhds at the cost of A. to the use of B.*, p. 72, "dischged from the sd condonal surrender of the —— day of ——, but subjt to a condon for makg void the surrender to be made psuant to this covt correspondg to the provo for redmon hinbfe contd"; *Declaron of trust of copyhds & power of atty*, p. 30; AND IT IS HBY agrd that the [power of sale for securg the sd ppal sum of £——, *the origl loan*, & the intt thron & all provons ancillary thto, & other] powers & provons in the sd indre of mtge contd for securg paymt of the sd sum of £——, *the origl debt*, & the intt thron, shl extend & be applicable so as to be a secy for the sd total ppal sum of £——, *the aggregate debt*, & the intt for the same at the rate of —— p.c. p.a. in like mner as if such [power of sale & provons ancillary thto, & other] powers & provons, were hrin repeated with such alterons only as wd be necy in consequce of the transfer of the sd mtge debt of £——, *the origl debt*, & intt & the secs for the same to the sd B., & of the consequent substiton of the said B. for the said K., *origl mtgee*, & in consequence of the change in the amt of the ppal sum secd, & of the rate of intt payable thron, & in the respive days appted for paymt of such ppal

Covenant for payment.

Further witnesseth.

Agreement.

Parcels.

To be subject to new proviso for redemption.

Further witnesseth.

Grant of new freeholds.

Proviso for redemption.

Further witnesseth.

Covenant to surrender copyholds.

Agreement that powers in original mortgage shall extend to new advance.

Insurance clauses in mortgage to extend to new freeholds.

sum & intt: [*add power of sale of new freehds* p. 20, *unless the statutory power is relied on*] (*a*); [AND FURTHER THAT the covts & provons in referce to the insurce of mtged premes agst fire in the sd indre of mtge contd shl extend & be applicable to the hds & premes hinbfe grted in the same mner in all respts as if the same had been hrin repeated with respt to all the hds & premes mtged by the sd indre of mtge & these psnts resply, with such alterons as may be necy as afsd, & with the substiton of the sum of £—— in lieu of £—— as the total amt of the sd insurce] (*b*); *Covt agst registron of freehds & leasehds*, p. 50, *form* XXXVI.; *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

LVII.

PREC. LVII.

DEED *of* FURTHER CHARGE *to a* BUILDING SOCIETY, *incorporated under the Building Societies Act*, 1874 (*c*).

PARTIES, A., a member of the —— Bldg Socy, incorpd under the Bldg Socs Act, 1874 (hinafter called the mtgor, wch expression shl include his hrs, exs, ads, & assns, where the context so admits), 1; The sd —— Bldg Socy (hinafter called the Socy, wch expression shl include their assns, where the context, &c.), 2; intd to be read as annexed to a certn indre of mtge from the mtgor to the Socy, dated, &c.: WITNETH that in conson of the further sum of £—— now advced by the Socy to the mtgor, makg up togr with the sum of £—— already advced to him by the Socy, & secd by the abovementd mtge, the amt to wch he is entled accdg to the rules of the Socy in respt of —— shares held by him in the Socy (the rect of wch sum of £—— is hby acknowed), the mtgor hby covts with the Socy THAT he, the mtgor, will pay to the Socy accdg to the rules thof the sum of £—— per [month], *continue covts by mtgor for paymt of instalmts & fines in respt of new*

Witnesseth.

Covenant to pay by instalments.

(*a*) If the original mortgage contains an express power of sale, it might be extended to the new freeholds by a short clause; but this is objectionable, as it makes the former deed a title deed to that property.

(*b*) If the transfer gave any new powers, the above clauses should of course be modified so as to extend to such powers.

(*c*) See Precedent XXIV., and the notes thereto; and the notes to Precedent LV.

advce, p. 122. AND IT IS HBY agrd & the mtgor, **as benefl owner,** doth hby declare that all the hds descd & comprd in the sd mtge of, &c., shl be a secy for & stand chged with the paymt to the Socy of as well the moys, fines, & fees payable in respt of the sd origl advce of £—— secd by the sd mtge, as of the moys, fines, & fees payable in respt of the sd further advce of £——, & shl not be redeemable until paymt of the whole of the sd moys, fines, & fees, accdg to the covts in the sd mtge & these psnts contd: AND THAT all the powers, trusts, covts & provons in the sd indre of mtge contd for better securg the paymt of the moys, fines, & fees thby secd or orwise relatg thto, shl extend & be applicable to secure the paymt of the moys, fines, & fees hby covted to be pd, in the same mner as nearly as may be as if such powers, trusts, covts, & provons had been hrin repeated with reference to all the moys, fines, & fees secd by the sd indre of mtge & these psnts resply. *Covt agst registron*, p. 50, *form* XXXVI.; *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

PREC. LVII.

Agreement that hereditaments shall be charged with further advance.

Powers in mortgage to extend to further advance.

LVIII.

DEED *of* FURTHER CHARGE *by* ENDORSEMENT *on a mortgage of a* LIFE INTEREST *in* PERSONALTY *and* POLICIES *where a* FRESH POLICY *is added as* SECURITY (*d*).

PREC. LVIII.

PARTIES, A., *mtgor,* 1; B., *mtgee,* 2: *Recite that new poly has been effected by A. on his own life* p. 4; *State of mtge debt, some intt being due,* p. 7; *Agrmt for further advce,* p. 7, on havg the paymt of the sd sum of £——, *the further advce,* & intt at the within-mentd rate secd, & the paymt of the within-mentd sum of £——, & the intt now due & henceforth to become due for the same, further secd in mner hinafter appearg. *First testatum as in Prec.* LV.; AND THIS INDRE ALSO WITNETH that in psuance, &c., & for the conson afsd, & also in conson of the sd sum of £——, *the old*

Recitals.

Agreement.

Further witnesseth.

(*d*) See the variations in Precedent LV.

PREC. LVIII.

Assignment.

Proviso for redemption.

Agreement that property comprised in original mortgage shall be charged with fresh advance.

Provisions in mortgage to extend to fresh advance.

debt, being owing by the sd A. to the sd B. as afsd, *continue assnmt by A.* **as benefl owner** *of new poly subjt to redmon, as in Prec.* XV.; *Provo for redmon,* p. 17, "on paymt of the sd sum of £——, *the old debt,* with intt thron from the —— day of ——, at the rate afsd, & of the sum of £——, *the fresh advce,* with intt thron from the date of these psnts at the rate afsd": AND the sd A. **as benefl owner** doth hby declare that ALL & SINGR the divds, intt, & income, pols, moys, & premes by the within-written indre assned, & also any new poly or pols wch may be effected accdg to the provons contd in the same indre shl stand chged, &c., *continue clause chging further advce, as in Prec.* LV.: AND IT IS HBY further agrd, that all the covts, trusts, & provons contd in the within-written indre in referce to the pols thby mtged, or any substituted pols or poly, or to any moys wch may be reced under or by virtue of the same, & also the [power of sale & provons ancillary thto, & other] powers & provons thrin contd, for securg paymt of the sd sum of £——, *the origl debt,* & the intt thron, shl extend & be applicable, so as to be a secy for the sd sum of £——, *the new advce,* & the intt thron, as well as the within-mentd sum of £—— & the intt thron, in the same mner in all respts as if the same covts, trusts, powers, & provons were hrin repeated with such alterons as wd be necy in consequce of the change of the ppal amt secd: AND FURTHER that [the power of sale &] (*a*) all the covts, trusts, powers, & provons contd in the within-written indre in relon to the sd pols thby mtged, or any substituted pols or poly, or the moys to be reced by virtue thof, shl extend & be applicable to the sd poly hby mtged, or any substituted poly or pols, & the moys wch may be reced by virtue thof, in the same mner in all respts as if the same [power of sale], covts, trusts, powers, & provons, with such alterons as afsd, had been inserted in these psnts with respt to the poly hby mtged, & any substituted poly or pols & the moys to be reced by virtue thof: PROVD ALWAYS, that all moys expd by the sd B., his exs, ads, or assns for keepg up or restorg any of the pols comprd in the within-written indre, or these psnts or any poly or pols substituted for the same or any of them or effectg any such substituted

And to new policy.

Mortgagee's expenses charged on all mortgaged premises.

(*a*) See p. 201, note.

poly with the intt on such moys shl be a chge on all the mtged premes comprd in the within-written indre & these psnts. *Mtgee's indemnity clause,* p. 59. IN WITS, &c. (*b*).

LIX.

PREC. LIX.

MEMORANDUM *of* FURTHER CHARGE *by* ENDORSEMENT *on the mortgage. Applicable to* ANY *kind of property. A* SHORT *Form.*

Charge.

I, the within-named A., *mtgor,* **as benefl owner,** do hby chge the within-mtged —— & premes with the paymt of the further sum of £——, this day advced to me by the within-named B., *mtgee,* with intt thron at the rate of —— p.c. p.a., payable on the —— day of —— & —— day of ——: And I declare [that the provon in the within indre contd for the redon of intt on punctual paymt, shl extend to the intt on the sd further advce: AND FURTHER] that *powers of mtge deed to extend to further advce,* p. 201, AS WITS my hand & seal, this —— day —— of ——.

Declaration.

LX.

PREC. LX.

TRANSFER *of* MORTGAGE *of* FREEHOLDS, LEASEHOLDS, *and* COPYHOLDS, *where the* MORTGAGOR *is* NOT *a* PARTY. VARIATIONS *where* NO SURRENDER *has been made of the Copyholds, and for the case of the* MORTGAGEE *being* DEAD, *and for* SEVERAL TRANSFERORS *or* TRANSFEREES (*c*).

Recitals.

PARTIES, A., *mtgee,* 1; B., *transferee,* 2. *Recite lease, or leases, Vol. I.,* pp. 364—365; *& devolon, if any, thof to mtgor,*

(*b*) Notice of this deed must be given to the trustees of the settlement and to all the offices. See p. 96, note.

(*c*) As to transfers of mortgages, see 2 Dav. Prec., part 2, p. 264; Elph. Introd. C. pp. 201 *et seq.* The transfer may be shortened as to the recitals by indorsing it on the mortgage or previous transfer (which, however, is not generally convenient unless both parties are acting by the same solicitor); or otherwise by

As to endorsing or annexing a transfer.

making it supplemental or annexed to the mortgage or previous transfer; the variations in either case being similar to those indicated in p. 200, note, in the case of a further charge; the recitals of the lease and devolution thereof to the mortgagor and of the mortgage being omitted.

As to the forms of statutory transfer in the C. A., 1881.

The C. A. 1881, gives in the 3rd schedule, part II., three very short forms of statutory transfer of mortgage, of freeholds or leaseholds, which are available where the original mortgage was in the statutory form given in part I. of the same schedule, as to which see p. 78 note, and have a special operation as provided by ss. 27 and 28 of the Act; these forms are given *infra.*

Variations where the mortgagee is dead.

If the mortgagee be dead, the frame of the transfer depends on whether he died since 1881 or not. If since, any mortgaged estate of inheritance or *pur autre vie* in freeholds, or in copyholds to which the mortgagee has not been admitted, vests under the C. A., 1881, whether he died testate or intestate, in his personal representatives, who can therefore in that case transfer both the debt and all the securities. If the mortgagee died before 1882, any legal estate in freeholds or copyholds which may have been vested in him would pass to his heir or devisee; and as the 4th section of the Vendor and Purchaser Act, 1874, which enabled the personal representatives of a mortgagee in certain cases to convey (and which, though repealed by the C. A., 1881, s. 30, remains in force as to mortgagees dying between the two Acts), applies to reconveyances on redemption only, and not to transfers (*In re Spradbery*, 14 Ch. D. 514), the heir or devisee must in that case be a party to convey the legal estate in both the freeholds and copyholds. This will be the case as to the copyholds even if the mortgagee has died since 1881, if he has been admitted, since s. 30 of the C. A., 1881, is repealed as to that case by the Copyhold Act, 1894, which repeals, and by s. 88 re-enacts the Copyhold Act, 1887, s. 45. In *Re Mills Trusts*, 37 Ch. D. 312 (re-argued, W. N. 1888, p. 155), it was held that if a sole trustee of copyholds had died between 31st December, 1881, and 16th September, 1887, the Copyhold Act, 1887, which was passed on the latter date, divested all trust estates from the personal representatives and vested them in the customary heir or devisee, subject to any disposition made by the personal representatives in the meantime; but on appeal (40 Ch. D. 14) the point was left undecided. The case of course equally applies to a sole mortgagee.

As to the freeholds and leaseholds.

The variations, therefore, for the case of the mortgagee being dead will as to the freeholds and leaseholds be as follows:—The personal representative will be party of the first; and if the mortgagee died before 1882, his heir or devisee, if not the same person as the personal representative, will be a party of the second part. After the recital of the mortgage recite the will of the mortgagee, stating the appointment of executors, and (if he died before 1882) the devise (if any) of mortgaged estates, his death and the probate; or recite his death intestate, the grant of administration, and (if he died before 1882) the heirship, and that the heir or devisee (if a party), "has, at the reqt of the sd exor, *or*, 'admor,' agrd to join in these psnts in mner hinafter appearg." The heir or devisee (if a party), or otherwise the executor or administrator, will **as tree** convey the freeholds at the request of the executor or administrator. The personal representative **as mtgee** will assign the debt and leaseholds.

As to the copyholds.

As to the copyholds, if there was a surrender, and if the mortgagee died *of loan for a term certn, the grt of the freehds, & demise or assnmt of the leasehds, the provo for redmon, the declaron of trust, if any, of the nominal revon of the leasehds, the covt to surrender the copyhds, and the declaron of trusts, if any, till surrender, settg out all the pcels at length;* [*Surrender & admittce, if any, of the mtgee to copyhds, Vol. I.*, p. 358, *addg*, "savg the rt of any psons havg an equity of redmon in the sd premes"]; *State of mtge debt, some intt being due*, p. 7; *Agrmt*

PREC. LX.

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before 1882, or if, having been admitted, he died after 1881 (and there had been no dealing by his personal representative prior to 16th September, 1887), the variations would be similar to those in the case of the freeholds where the mortgagee died before 1882; and if the mortgagee died after 1881 without having been admitted, the variations would be as in the case of the freeholds where the mortgagee died after 1881; a covenant to surrender being in either case substituted for a conveyance. If there has been no surrender, the personal representative **as mtgee** (together with the heir **as tree** if the covenant was entered into with him and the mortgagee died before 1882), must assign the benefit of the covenant. See further, 37 Sol. J., 727.

Variations where no surrender.

If the original mortgage was made to trustees, the fact of its having been made on a joint account should be noticed if any of them have died. If the transferees are trustees, the fact of the loan being on joint account will be stated as in an original mortgage, the joint account clause (p. 37) and clause as to devolution of powers (p. 61) being added if thought fit. The other variations in either case will be merely the substitution of the plural.

Variations where no transferors or transferees are trustees.

As to the right of a second equitable mortgagee, with notice of a prior equitable mortgage, to get in the legal estate from the legal mortgagee, see *Taylor* v. *Russell*, [1892] A. C. 244; above, p. 82, note. As to transfer by mortgagee in possession, see *Hall* v. *Heward*, 32 Ch. D. 430.

Where the interest is regularly paid and no notice to pay off the principal has been given, a mortgagee who transfers the mortgage without the concurrence of the mortgagor and without calling on him for payment cannot add the costs to his security. *Re Radcliffe*, 22 Beav. 201.

Costs.

As to stamps on transfers of mortgage, see the Stamp Act, 1891, s. 87 and Schedule, title, MORTGAGE; *Wale* v. *Commissioners of Inland R.*, 4 Ex. D. 270, a decision on the Stamp Act, 1870; and the C. A., 1881, s. 27 (4). Where on a transfer after part of the original mortgage money has been paid off, the conveyance is made subject to the existing equity of redemption, only transfer duty is payable, but where the conveyance is made free from the existing and subject to a new proviso for redemption, not only transfer duty but also duty as on a re-conveyance in respect of the amount that has been paid off is claimed by the Authorities of Inland Revenue, but this claim appears to be unfounded and it is contrary to the established practice. See 41 Sol. J. 278; *Munro* v. *Commissioners, &c.*, 33 Scottish Law Reporter, 152; S. C. [1896] W. N. 149, *sub nom. Munro* v. *Inland Revenue.*

Stamps on transfers.

A transfer of a registered charge on registered land is to be made by an instrument in form XLIV., in the first schedule to the L. T. R.; and will be completed by the registration of the transferee as proprietor of the charge, L. T. A., 1875, s. 40. A note of the transfer is to be endorsed on the certificate of charge, L. T. A., 1897, s. 8, and the transferee may require the registrar to deliver a new certifi-

Transfer of registered charge.

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Witnesseth.
Assignment.
Mortgage debt.
Habendum.
To transferee.
Further witnesseth.
Grant.
Freeholds.
Habendum.
To use of transferee.
Subject to proviso for redemption.

for the transfer, p. 7; *form* XVI. (*a*). NOW THIS INDRE WITNETH that in psuance of the sd agrmt, *conson*, p. 9, *the amt being the total sum due for ppal & intt on the mtge*, the sd A. **as mtgee** (*b*) doth hby assn unto the sd B., ALL THAT the sd ppal sum of £—— secd by the hinbfe recited indre of mtge as afsd, & the intt now due, & henceforth to become due, for the same, & the benefit of all secs for the same (*c*); TO HOLD the same UNTO the sd B., absolutely. AND THIS INDRE ALSO WITNETH that in further psuance of the recited agrmt, & for the conson afsd, the sd A. **as mtgee** (*b*) doth hby grt unto the sd B., ALL & SINGR the freehd hds & premes grted or assured by the hinbfe recited indre of mtge of the —— day of —— (*d*), or wch are now by any means (*e*) vested in the sd A. subjt to redmon by virtue of the same indre, TO HOLD the same UNTO & TO THE USE of the sd B., his hrs & assns, SUBJT to such rt or equity of redmon as the same premes are now subjt to by virtue of the hinbfe recited indre of mtge on paymt to the sd B., his exs, ads, or assns, of the sd sum of £——, *the ppal*, & the intt now due & henceforth to become due for the

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cate of charge to him, L. T. A., 1875, s. 40, but in practice it is presumed that the transferee will content himself with having the existing certificate properly endorsed and handed over to him.

Variations for several transferees.

(*a*) Where the money advanced belongs to several transferees on a joint account, say, "the sd sum of £—— out of moys belongg to them on a jt acct." The other variations will be merely the substitution of the plural.

(*b*) The words "**as mtgee**" imply a covenant against incumbrances by the transferor, or by each of them if more than one as to his own acts only, as to the mortgage debt, and the freeholds, leaseholds, and copyholds, see p. 62, note.

Power of attorney.

(*c*) As to the omission of the power of attorney, see Vol. I., p. 112, note; above, p. 39, note. If there is any doubt as to the possibility of immediately giving notice to the mortgagor, the power of attorney (p. 39) should be inserted.

Variation where part has been reconveyed.

(*d*) Where part of the property has been re-conveyed, say here, "save & except such pt or pts thof as were conveyed & reled by the hinbfe recited indre of the —— day of —— [If necessary, add "or wch by means of any exchange or partition may have been parted with or become extinguished"] & (by way of conveyce & not of exception) all other, if any, the hds now remaing vested, &c."

Variation for accretions.

(*e*) If the mortgage is an old one, and there may have been accretions to the property arising from enclosures, &c., say, "or wch are now by means of any enclosure, exchange, allotmt, award, or orwise vested, &c."

same: AND THIS INDRE ALSO WITNETH that in further psuance of the recited agrmt & for the conson afsd, the sd A. **as mtgee** (*f*) doth hby assn unto the sd B., ALL & SINGR the leasehd hds & premes demised *or* "assned" by or wch are now by any means vested in the sd A. subjt to redmon by virtue of the hinbfe recited indre of mtge of the —— day of —— [*if the mtge was by demise with a declaron of trust of the nominal revon, add,* "& with the benefit of the trust & incidental powers & provons contd in the sd indre of mtge in favour of the sd A. of & concerng the sd nominal revon (*g*) thby reserved of the sd term created by the sd indre of lease"]; TO HOLD the same UNTO the sd B., for the residue of the sd term for which the same premes were demised [assned] by the hinbfe recited indre of mtge [& for all the este & intt of the sd A. in the sd nominal revon reserved by the same indre of the sd term created by the sd indre of lease] subjt to such rt or equity of redmon as afsd: AND THIS INDRE ALSO WITNETH that in further psuance of the recited agrmt & for the conson afsd, the sd A. **as mtgee** (*f*) doth hby covt with the sd B., *to surrender*, p. 72, "at the cost of the sd B., his exs, ads, or assns, the sd copyhd or customaryhd hds & premes comprd in the hinbfe recited surrender of the —— day of ——, TO THE USE of the said B., his hrs & assns, accdg to the custom, &c., subjt to such rt or equity of redmon as afsd, *Declaron of trust till surrender & power of atty*, p. 30 (*h*). IN WITS, &c.

Further witnesseth.
Assignment.
Leaseholds.
Habendum.
To transferee.
Further witnesseth.
Covenant to surrender copyholds.
To use of transferee.

(*f*) See last page, note (*b*).

(*g*) For several leases, say here and subsequently, "respive nominal revons," or "terms," or "indres of lease."

(*h*) If the mortgagor's concurrence cannot be obtained, the mortgagee must be admitted on the surrender to him, and then surrender to the use of the transferee, subject to the mortgagor's equity of redemption. If the mortgagor is willing to concur, and has not encumbered the equity of redemption, the original surrender should be vacated, and a new surrender taken from the mortgagor to the transferee. Having regard to the latter alternative, a covenant that the mortgagee will obtain admittance is not inserted in the text, but is, if necessary, implied. If there has been no surrender, and the mortgagor does not concur, the following assignment of the benefit of the covenant to surrender must be substituted for a covenant to surrender:—"The sd A. **as mtgee** doth hby assn unto the sd B., ALL & SINGR the sd copyhold or customaryhd hds & premes by the hinbfe recited indre of mtge covted to be surrendered, TOGR WITH the benefit of the sd covt for the surrender of the sd premes, with full

As to transfers of mortgages of copyholds.

LXI.

PREC. LXI.

TRANSFER *of* MORTGAGE *of* FREEHOLDS, LEASEHOLDS, *and* COPYHOLDS, *where the* OWNER *of the* EQUITY *of* REDEMPTION *is a* PARTY *and has* NOT INCUMBERED *the equity of redemption, and where a* NEW COVENANT *for payment and* PROVISO *for* REDEMPTION *and* NEW POWERS *are inserted* (*a*). VARIATIONS *for* SEVERAL *transferors or transferees, for the case of the* MORTGAGEE *being* DEAD (*b*), *and where the mortgagor receives a* FURTHER ADVANCE (*c*).

PARTIES, A., *mtgee,* 1; B., *mtgor,* 2; K., *transferee,* 3.

Recitals. *Recite the lease, &c., & mtge as in the last Prec, & noticg*

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power to sue thron in the name or names of the sd A., his exs or ads, & all other powers and means necy for enforcg the pformce of the same, To HOLD the same premes UNTO the sd B., his hrs & assns, subjt to such rt," &c., as in the text.

If the mortgage is to several, add, if need be, joint account clause, p. 37; but as the C. A., 1881, s. 61, applies to transfers to several on a joint account, that clause may in general be omitted as in an original mortgage; see p. 37, note.

Enquiry should be made before completion from the mortgagor as to the amount due on the mortgage, &c. Notice of the transfer must be given to the mortgagor. As to whether it is necessary for the transferee to inquire if the full amount stated in the mortgage was in fact paid, see *Bickerton* v. *Walker*, 31 Ch. D. 151.

Where there have been intermediate dealings with the mortgage, and there are deeds affecting it which relate to other property and are not handed over, an acknowledgment of the right to production should be inserted in the transfer, see p. 60.

As to giving new powers in a transfer.

(*a*) It has been the usual practice in this case to arm the mortgagee with new powers as in an original mortgage, if it is sufficiently certain that the equity of redemption has not been encumbered. Where brevity is desired, the old powers may be relied on, the deed in that case following the form of the next precedent, or if new powers are preferred, the statutory powers of sale, &c. (as to which, see pp. 20, 42, 52, notes), may be relied on.

As to making the transfer by endorsement on, or annexation to, the mortgage, see p. 207, note.

As to the stamp on such a transfer.

Although a deed such as that in the text, creating a new equity of redemption, and giving new powers, constitutes in effect a new mortgage, it is chargeable with stamp duty as a transfer only, see the references in p. 209, note.

Variations where mortgagee is dead.

(*b*) If the mortgagee be dead, his personal representative, and also as to freeholds, if he died before 1882 (see p. 208, note, and as to copyholds, in the

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(*c*) See next page for this note.

PREC. LXI.

also the power of sale & other provons for secg paymt of the mtge moys (*d*)*; condonal surrender of copyhds*, Vol. I., p. 359 [*& admittce*, Vol. I., p. 358, *addg at the end of the form,* "savg the rts of all psons intted in the equity of redmon of the sd premes"]; *If B. is not the origl mtgor, recite shortly the devolon of title to the equity of redmon, or say,* "AND WHAS the equity of redmon of the sd freehd, leasehd, & copyhd premes comprd in the sd indre of mtge is now vested in the sd B.;" *Psnt state of mtge debt, all intt havg been pd,* p. 7; *Agrmt for transfer,* p. 7, NOW THIS INDRE WITNETH that in psuance of the recited agrmt, & in conson of the sum of £—— now pd to the sd A. by the sd K. at the reqt of the sd B. (*e*), *Rect,* the sd A. as mtgee at the reqt of the sd B., doth hby assn unto the sd K. (*f*) ALL THAT the sd ppal sum of £—— so owing to the sd A., upon the secy of the hinbfe recited indre of mtge, as hinbfe mentd, AND all intt henceforth to become due for the same: AND the benefit of the power of

Witnesseth.

Assignment of mortgage debt.

And interest.

And powers.

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cases mentioned in that note), his heir or devisee will be a party. The recitals will be the same as those indicated on p. 208, note, with the addition of a recital of the admission of his customary heir or devisee, if such has been taken. The heir or devisee will grant the freeholds as tree at the request of the personal representative and of the mortgagor; and if the mortgagee has been admitted, will as tree at the like request concur in the covenant to surrender. The personal representative will as mtgee assign the mortgage debt and the leaseholds at the request of the mortgagor.

Variations where transferors or transferees are trustees.

The variations for the case of the transferors or transferees being trustees will be as indicated above, p. 209, note.

Variations where mortgagor receives a further advance.

(*c*) This Precedent can readily be adapted to the case of the mortgagor receiving a further advance on the occasion of the transfer. Instead of the recital of the agreement for the transfer, recite agreement for transfer and further advance, p. 7.

The covenants for payment and the proviso for redemption will extend to the aggregate amount of the original debt and further advance.

(*d*) It is sometimes convenient, where the mortgagor is a party, to give the description of the parcels in the operative part as in a new mortgage, see 2 Dav. Prec., part 2, p. 782, note. In that case the property may be referred to in the recital of the mortgage as "the hds hby grted."

(*e*) For a further advance continue as follows:—"the rect whof the sd A. doth hby acknowe, & of the sum of £—— *the advance* now pd to the sd B. by the sd K. the rect & paymt in mner afsd of wch sd sums of £—— & £—— making an aggregate sum of £—— the sd B. doth hby acknowe."

(*f*) As to the enactment in the C. A., 1881, s. 15 (as amended by the C. A., 1882, s. 12), making it obligatory on a mortgagee, if required, to transfer the debt and security to a third person instead of reconveying, see p. 16, note.

Habendum. To transferee.

Further witnesseth. Covenant for payment.

Further witnesseth. Grant of freeholds.

Habendum. To transferee subject to new proviso for redemption.

Further witnesseth. Assignment of leaseholds.

Further witnesseth. Covenant to surrender copyholds.

sale (*a*) & all other powers, remedies, & secs, contd in or given by the sd indre of mtge for securg or recoverg the sd ppal sum & intt, To HOLD the same UNTO the sd K. absolutely; AND THIS INDRE ALSO WITNETH that in further psuance of the recited agrmt & for the conson afsd, *Covt by B. with K. for paymt of ppal on the next day for paymt of intt* (*b*), p. 9; *& intt after default,* p. 10; AND THIS INDRE ALSO WITNETH that in further psuance, &c., & for the conson afsd, the sd A. **as mtgee**, at the reqt of the sd B. (*d*) doth hby grt, & the sd B. **as benefl owner** doth hby grt & confirm, unto the sd K., *freehd pcels by referce to the mtge as in last Prec, or if thought desirable, set them out at length, as in an origl mtge;* To HOLD the same UNTO & TO THE USE of the sd K., his hrs & assns, free from all rt or equity of redmon, under or by virtue of the hinbfe recited indre of mtge, but subjt to the provo for redmon hinafter contd: AND THIS INDRE ALSO WITNETH that in further psuance, &c., & for the conson afsd, the sd A. **as mtgee**, at the reqt of the sd B., doth hby assn, & the sd B. **as benefl owner** doth hby assn [*or if the mtge was by demise,* demise], & confirm unto the sd K., *Leasehd pcels by referce to mtge as in last Prec, or if thought pper by referce to lease as in origl mtge; Habendum to K., as in origl mtge, free from the old & subjt to new provo for redmon as above; Provo for redmon,* p. 17, *form* IV.; *If the mtge was by demise insert declon of trust by B. of nominal revon of leasehds & power of atty, &c.,* p. 30; AND THIS INDRE, &c., *if there has been no surrender, or a surrender but no admittce on the mtge* (*e*), *add a covt by B.* **as benefl owner**, *but if there has been both a surrender & admittce, a covt by A.* "**as mtgee**,"

(*a*) This will keep alive the old power of sale, *Young* v. *Roberts*, 15 Beav. 558.

(*b*) If convenient, the days for payment of interest may be altered.

(*d*) The mortgagee cannot be forced to convey the mortgaged property by any description other than that by which it was conveyed to him. If, therefore, a new description is employed, add here, "so far only as relates to such of the hds hinafter descd & grted as were comprd in or are by any means vested in the sd A., subjt to redmon by virtue of the hinbfe recited indre of mtge."

(*e*) In this case satisfaction of the conditional surrender to A. must be entered up. See the form of warrant, *post*, 239.

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& by B. "**as benefl owner**" *with K.*, "his exs, ads, & assns," *to surrender the copyhds, descd by referce to the mtge & surrender, as in the last Prec, or, if thought pper, by a new description,* "at the cost of the sd B., his hrs, exs, ads, or assns," "free & dischged from the equity of redmon now subsistg thrin by virtue of the hinbfe recited indre of mtge & surrender, [& admittce] but subjt, &c.;" *Condon for makg void the surrender*, p. 17, *form* VI.; *Declaron of trust by B. or by A., as the case may be, till surrender*, p. 30; *Covt to insure & repair if appropriate*, p. 42, *& power of sale*, p. 20, *or, if the statutory powers are relied on, add the covt supplemental to the statutory provons for insurce*, p. 45. *Provo keepg alive power of sale in origl mtge*, p. 29 (*f*). *Covt agst registron of freehds and leasehds*, p. 50, *form* XXXVI. *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

LXII.

TRANSFER *of* MORTGAGE *of* FREEHOLDS, LEASEHOLDS, *and* COPYHOLDS, *where the* MORTGAGOR *is a* PARTY, *and has* INCUMBERED *the equity of redemption, and there has been a* PREVIOUS TRANSFER (*g*).

PREC. LXII.

Recitals.

PARTIES, A., *mtgee*, 1; B., *mtgor*, 2; K., *transferee*, 3. *Recite the lease, &c., & mtge, as in Prec.* LXI.; *Transfer of mtge to A. settg out the transfer of the debt, the covt, if any, for paymt, the convce of the mtged ppty, with the provo, if any, for redmon, & noticg any new powers given; Condonal surrender, if any, of copyhds on the occasion of the transfer*, p. 6, *mutatis mutandis; Psnt state of mtge debt, some intt being due*, p. 7; *Agrmt for transfer*, p. 7, *form* XVII.; NOW THIS INDRE WITNETH that in psuance of the recited agrmt, *conson*, p. 9, *Assnmt of mtge debt, as in last Prec, saying*, "indres of mtge of, &c., & transfer of, &c., resply," &

Witnesseth.

Assignment of debt.

(*f*) See *Boyd* v. *Petrie*, L. R. 7 Ch. 385.

(*g*) The variations where the transferors or transferees are trustees will be as indicated in p. 209, note; and where there are several transferees, p. 210.

PREC. LXII.

Further witnesseth. Covenant for payment. Further witnesseth. Grant and assignment.

"all intt due & to become due for the same"; AND THIS INDRE ALSO WITNETH, &c., *covt by B. for paymt of ppal on next day for paymt of intt, with intt,* "as from the —— day of —— now last past," *i.e., the last day up to wch intt was pd,* p. 9, *& intt after default,* p. 10; AND THIS INDRE ALSO WITNETH, &c., *grt by A., of freehds & assnmt of leasehds,* [*& of his intt in the nominal revon of leasehds,*] *& habendum, as in last Prec, except that B. will not join in the grt & assnmt, wch will be expd to be made at his reqt, & except that the ppty will be descd as that wch was conveyed by the previous transfer instead of the origl mtge, & except that the old equity of redmon will be preserved as in Prec.* LX.:

Further witnesseth. Covenant by mortgagee to be admitted, and surrender copyholds.

AND THIS INDRE ALSO WITNETH, &c., the sd A., at the reqt of the sd B., doth hby covt with the sd K., THAT he the sd A. or his hrs will forthwith, at the costs of the sd B., his hrs, exs, ads, or assns, procure himself or themselves to be admitted tenant or tenants of the sd copyhd or customaryhd hds & premes comprd in the hinbfe recited indre, &c., *the previous transfer,* & the surrender of, &c.: AND WILL forthwith after such admittce, at the like costs, well & effectually surrender the same, *continue covt to surrender, as in Prec.* LX. (*a*):

And in the meantime to hold premises in trust for transferee. Covenant by mortgagor to repay sums paid by transferee for admission.

AND FURTHER that in the meantime, & until such surrender shl be made, the sd A., his hrs & assns, will stand seised of the sd premes in trust for the sd K., his hrs & assns, subjt to such rt or equity of redmon as is now subsistg thrin as afsd; *Covt by B. with* "K., that he, the sd B., his hrs, exs, or ads, will on demand repay to the sd K., his hrs, exs, ads, or assns, ALL & EVERY sum or sums of moy wch he or they may pay in respt of the admission of the sd A., his hrs or assns, to the sd copyhd premes, & the subseqt surrender by him or them, accdg to the covt hinbfe covtd, WITH intt thron at the rate afsd from the time or times of paymt, & that in the meantime the same moys & intt shl be a chge on all the sd mtged premes." *Covt agst registron of freehds & leasehds,* p. 50, *form* XXXVI.; *Mtgee's indemnity clause,* p. 59. IN WITS, &c.

(*a*) As to the mode of transfer of copyholds, see p. 211, note (*h*).

LXIII.

ADMITTANCE *of a* MORTGAGEE *to* COPYHOLDS *preparatory to a* TRANSFER.

PREC. LXIII.

Manor of —— }
Coy of —— } The —— day of ——.

Recitals. Surrender.

WHAS on the —— day of ——, A., *mtgor*, of, &c., one of the copyhd tenants of the sd manor, came bfe me, X. [deputy], steward of the said manor, and did out of ct surrender into the hands of the lord of the sd manor, *pcels*, to the use of B., *mtgee*, of, &c., his hrs & assns, accdg to the custom of the sd manor by & under the rents, fines [heriots], suits, & services due & of rt accustomed for the same, subjt to a condon for makg void the same surrender on payment by the sd A., his hrs, exs, ads, or assns, to the said B., his exs, ads, or assns, of the sum of £——, with intt for the same at the rate thrin mentd on a day now past: AND WHAS the sd sum of £—— with some intt remains due to the said B.; NOW BE IT REMEMBERED that on the day first above mentd the sd B. came bfe me, the said X. [deputy], steward of the sd manor out of ct, & prayed to be admitted tenant to the sd hds so surrendered to his use as afsd, of wch sd hds the lord of the sd manor, by me the said X., grted seisin by the rod, TO HOLD the same UNTO the sd B. & his hrs at the will of the lord accdg to the custom of the sd manor, by & under the rents, fines [heriots], suits, & services, due & of rt accustomed for the same: AND SO savg the rt of the lord and the rt of all psons intted in the equity of redmon of the sd hds & premes, the sd B. is admitted tenant of the same, & pays to the lord on such his admittce a fine certain of £——, & his fealty is respited.

State of mortgage debt.

Memorandum of admittance.

LXIV.

PREC. LXIV.

CONDITIONAL Surrender *of* Copyholds *by* Mortgagor *to* Transferee *of mortgage.* Variations *where the* Surrender *is made by a* Mortgagee *who has been admitted.*

Manor of —— }
Coy of —— } BE IT REMEMBERED that on the —— day of ——, A., *mtgor* [B., *mtgee*], of, &c., a customary tenant of the sd manor, came bfe me, X. [deputy], steward of the sd manor, & in conson of the sum of £—— pd by C., *transferee*, of ——, to B., of, &c., by the diron of the sd A., in satisfon of all ppal moys & intt secd to the sd B. by a condonal surrender, dated, &c., of the copyhd hds hinafter mentd [to wch sd hds the sd A. [B.] was admitted on the —— day of ——], did out of ct surrender, &c., *as in Prec.* IV., p. 74, *where the surrender is by the mtgee, instead of the words,* "& also subjt to a condon, &c.," *say,* "Subjt to such equity of redmon as is now subsistg in the said premes by virtue of the afsd condonal surrender of the —— day of ——."

LXV.

PREC. LXV.

STATUTORY Transfer *of* Mortgage *of* Freeholds *or* Leaseholds *under the 27th section of the* Conveyancing Act, 1881, *the mortgagor* Not *joining.* Variations *for a transfer to* Trustees (*a*).

THIS INDRE, made by way of statutory transfer of mtge the —— day of ——, 18—, Betn A., *mtgee*, of the one pt, &

As to the statutory forms of transfers of mortgage.

(*a*) This Precedent and the two which follow are in the forms given in the C. A., 1881, Schedule iii., part 2, which, in addition to their ordinary operation as implying covenants against incumbrances or for title, as the case may be, and any other clauses under the general provisions of the Act, have also a special operation as defined by ss. 27 and 28. It must be particularly remembered that the forms can only be used where the original mortgage was a "statutory mortgage" under s. 26 (as to which see p. 78), and therefore have only a limited operation; and they apply only to freeholds and leaseholds. Each of the three forms

PREC. LXV.

B., *transferee,* of the other pt, supplemental to an indre made by way of statutory mtge dated the —— day of ——, 18—, & made betn, &c., WITNETH, that in conson of the sum of £——, now pd. to A. by B. (*b*), being the aggregate amt of £——, mtge-moy, & £——, intt due in respt of the said mtge, of wch sum A. hby acknowes the rect, A., as mtgee, hby conveys & transfers to B., the benefit of the said mtge. IN WITS, &c. (*c*).

LXVI.

STATUTORY TRANSFER *of* MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS *under the* 27*th section of the* CONVEYANCING ACT, 1881, *the* MORTGAGOR *or* OTHER PERSON *joining to* COVENANT *for* PAYMENT (*d*).

PREC. LXVI.

THIS INDRE, made by way of statutory transfer of mtge the —— day of ——, 18—, BETN A., *mtgee,* of the first pt, B., *covtor,* of the second pt, & C., *transferee,* of the third pt, supplemental to an indre made by way of statutory mtge, dated the —— day of ——, 18—, & made betn, &c., WITNETH that in conson of the sum of £——, now pd to A. by C. (*b*), being the mtge-moy due in respt of the sd mtge, no

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operates as a transfer of the mortgage debt and the mortgaged property : the second form also operates as a covenant for payment by the person joining as covenantor, or by each of such persons jointly and severally if more than one; and the third form operates not only as a "statutory transfer," but also as a "statutory mortgage," so as to have effect accordingly under s. 26; but not so as to be liable to any increased stamp duty by reason only of its being designated a mortgage; as to which, see p. 209, note. These statutory forms may be varied or added to as circumstances require, see s. 27. The forms are expressed as "supplemental" to the mortgage, but may be varied so as to be made by endorsement. See the schedule, part 2 (C).

(*b*) If the transferees are trustees, say here, "out of moys belongg to them on a jt acct." The other alterations will be merely the substitution of the plural.

(*c*) Notice to be given to the mortgagor.

(*d*) See note (*a*), p. 218.

PREC. LXVI. intt being now due and payable thron, of wch sum A. hby acknowes the rect, A., **as mtgee**, with the concurrence of B., who joins hrin as covtor, hby conveys & transfers to C. the benefit of the sd mtge. IN WITS, &c. (*a*).

LXVII.

PREC. LXVII.

STATUTORY TRANSFER *and* STATUTORY MORTGAGE *combined under the 27th section of the* CONVEYANCING ACT, 1881 (*b*).

THIS INDRE, made by way of statutory transfer of mtge & statutory mtge the —— day of ——, 18—, BETN A., *mtgee*, of the first pt, B., *mtgor*, of the second pt, & C., *transferee*, of the third pt, supplemental to an indre made by way of statutory mtge dated the —— day of ——, 18—, & made betn, &c.; WHAS the ppal sum of £—— only remains due in respt of the sd mtge as mtge-moy, & no intt is now due & payable thron*;* AND WHAS B. is seised in fee simple of the land comprd in the sd mtge subjt to that mtge; NOW THIS INDRE WITNETH that in conson of the sum of £—— now pd by C. to A. (*c*), of wch sum A. hby acknowes the rect, & B. hby acknowes the paymt & rect as afsd (*d*), A., **as mtgee**, hby conveys & transfers to C. the benefit of the sd mtge; AND THIS INDRE ALSO WITNETH that for the same conson, A., **as mtgee**, & accdg to his este & by diron of B., hby conveys, & B. (*e*), **as benefl owner**, hby conveys & confirms to C. ALL THAT, &c., TO HOLD TO & TO THE USE OF C., in fee simple

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(*a*) Notice to be given to the mortgagor if not a party.

(*b*) See note (*a*), p. 218.

(*c*) See note (*b*), p. 219, as to the case of a transfer to trustees.

(*d*) For a further advance, insert, "& also in conson of the further sum of £—— now pd by C. to B., of wch sum B. hby acknowes the rect."

(*e*) For a further advance, insert, "as mtgor &," so to imply a covenant to pay it.

for securing paymt on the —— day of ——, 18—, of (*f*) the sum of £—— as the mtge-moy, with intt thron at the rate of —— p.c. p.a. IN WITS, &c.

PREC. LXVII.

LXVIII.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *with the concurrence of a* SUB-MORTGAGEE, *who is paid off, the mortgagor receiving a* FURTHER ADVANCE, *and bringing* ADDITIONAL FREEHOLDS *into mortgage.*

PREC. LXVIII.

PARTIES, A., *mtgee*, 1; B., *sub-mtgee*, 2; C., *mtgor*, 3; D., *transferee* 4; *Recite the mtge* (hinafter called "the mtge") *as in Prec.* LXI.; AND WHAS by an indre dated, &c., & made, &c., (hinafter called the "sub-mtge"), for the conson, &c., the sd mtge debt of £—— secd by the mtge & the intt thron & the hds comprd in & assured by the mtge, subjt as to such hds to such equity of redmon as the same were subjt to by virtue of the mtge, were resply assned & conveyed by the sd A. to the sd B. by way of mtge for securg to the said B. the sum of £—— & intt; *State of mtge debt & sub-mtge debt, all intt pd*, p. 7: *Title of C. to addonal freehds:* AND WHAS the sd D. has at the reqt of the sd A. & C. resply agrd to pay the sum of £—— in mner hinafter appearg, & to lend to the sd C. the further sum of £——, upon havg such transfer as is hinafter contd of the sd mtge debt of £——, & intt, & the secs for the same, dischged from the sub-mtge, & upon havg the repaymt of the sd sums of £—— & £——, makg an aggregate ppal sum of £——, with intt at the rate hinafter mentd, secd & further secd resply in mner appearg; NOW THIS INDRE WITNETH that in psuance of the recited agrmt & in conson of the sum of £——, *the origl mtge debt*, now pd by the sd D. at the reqt of the sd A. & C. resply in mner follg, namely, the sum of £——, pt thof to the sd B. in full dischge of the moys owg to him under the sub-mtge as afsd (the

Recitals.

Sub-mortgage.

Agreement.

(*f*) For a further advance, insert, "the sums of £—— & £——, makg togr."

PREC. LXVIII.

rect, &c.), & the sum of £—— residue thof to the sd A. (the rect & paymt in mner afsd of wch respive sums makg togr £—— the sd A. doth hby acknowe), & in conson of the sum of £——, *the further advce*, now pd by the sd D. to the sd C. (the paymt & rect resply of wch sums of £—— & £——, makg the aggregate sum of £——, the sd C. doth hby acknowe), the sd B., **as mtgee**, at the reqt of the sd A. & C. resply, doth hby assn & rele, & the sd A., **as mtgee**, at the reqt of the sd C. doth hby assn & confirm unto the sd D. ALL THAT the sd ppal sum of £—— owing upon the secy of the mtge as hinbfe mentd, & all intt, &c., & the benefit of all powers, &c., TO HOLD the same unto the sd D., absolutely dischged from all ppal moys & intt secd by & from all claims & demands under the sub-mtge, *Covt by mtgor for paymt of aggregate debt*, p. 9, *& intt after default*, p. 10; AND THIS INDRE ALSO WITNETH that in further psuance, &c., & for the conson afsd, the sd B., **as mtgee**, at the reqt of the sd A. & C. resply, doth hby grt, & the sd A., **as mtgee**, at the reqt of the sd C., doth hby grt, & the sd C., **as benefl owner**, doth hby grt & confirm unto the sd D. *pcels, by referce to mtge, or if desired at length, see Prec.* LXI., p. 214, & all other, if any, the hds wch are now by any means vested in the sd A. & B. or eir of them, subjt to redmon under or by virtue of the mtge & sub-mtge resply; *Habendum*, dischged from the sub-mtge, & all moys thby secd & all claims thrunder & free from all equity of redmon under or by virtue of the mtge, but subjt to the provo for redmon hinafter contd. *Further testatum;—Convce by C. of addonal freehds to D., subj to redmon*, p. 71. *Provo for redmon on paymt of aggregate loan & intt*, p. 16; *Provo (if any) in mtge for redon of intt to extend to new advce*, p. 201; *Powers in origl mtge to extend to new advce*, p. 203, *mutatis mutandis; Insurce clause (if any) in mtge to extend to new freehds*, p. 204, *or if none insert the clause, if required*, p. 42; *Covt agst registron*, p. 50, *form* XXXVI.; *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

Assignment of mortgage debt.

Further witnesseth.

Grant.

LXIX.

TRANSFER *by* ENDORSEMENT *of* MORTGAGE *of* FREEHOLDS, LEASEHOLDS, AND COPYHOLDS, *the* MORTGAGOR NOT *being a* PARTY (*a*), *where the* MORTGAGEES *are* TRUSTEES *and the* TRUST *is* NOT DISCLOSED, *the* TRANSFER *being made on the* APPOINTMENT *of* NEW TRUSTEES. VARIATIONS *where there is a* CONTINUING TRUSTEE (*b*).

PREC. LXIX.

PARTIES, A. & B., *trees & mtgees*, 1; C., D., & E., *new trees & transferees*, 2; *Recite state of mtge debt*, p. 7: AND WHAS the

Recitals.

(*a*) The mortgagor is not usually made a party to a transfer made on the appointment of new trustees. As to the costs of a transfer made in the absence of the mortgagor, see *Re Radcliffe*, 22 Beav. 201, and note, p. 209.

(*b*) If there is a continuing trustee, the parties will be A., *retiring trustee*, and B., *continuing trustee*, 1; B., and C., and D., *new trustees*, 2; the mortgage debt will be assigned by A. and B., as mtgees, to B., C., and D., and with a power of attorney (if deemed expedient, see p. 210, note) to B., C., and D., to use the names of A. and B.; the freeholds will be conveyed by A. and B. as mtgees, to "C. & D., & their hrs TO THE USE of B., C., & D., their hrs & assns;" and the leaseholds will be assigned by A. and B., as mtgees, to "B., C., & D.;" and A. B., as mtgees, will covenant with C. and D. to surrender the copyhold to the use of B., C., and D. In the covenant against incumbrances which is implied by the C. A., 1881, s. 7, in this case (see p. 210, note), B., the continuing trustee, is both a covenantor and covenantee (see Vol. I., p. 111); but this is not of any practical importance; under the old practice the express covenant would have been by A. and B. with C. and D. The T. A., 1893, s. 12, enabling the trust estate to be transferred on an appointment of new trustees by the declaration of the appointor, does not apply to legal mortgages, see Vol. I., p. 104; and even if it did apply, could not be used where the trust is not disclosed. See the Precedent of an appointment of a new trustee, where the trust funds are invested on mortgage, in Vol. I., p. 113, and as to the mode of conveying the trust estate, see Vol. I., pp. 117, 127.

Variations for continuing trustee.

This form may, with slight modification, be adapted to the case of a transfer to a beneficiary becoming entitled under a settlement or will (compare Precedent LXXVII., *infra*). In such a case the covenant to surrender the copyholds will be expressed to be at the cost of the beneficiary.

Where an existing mortgage is settled on marriage it will be transferred to the trustees of the settlement by an independent deed (see the form *infra*, in SETTLEMENTS, PERSONAL) which discloses the trusts and contains a power to appoint new trustees. In such a case a transfer on the appointment of new trustees may conveniently be made "supplemental to an indre, hinafter refd to as the ppal indre, dated, &c., whby in conson of the marre since solemnised betn H. & W. the ppal sum of £——

PREC. LXIX.

Title of transferees.

Agreement.

sd C., D., & E. have become entled in equity to the sd ppal sum of £—— & the intt now due & henceforth to become due for the same: AND WHAS the sd A. & B. have agrd, at the reqt of the sd C., D., & E., to exte such transfer of the sd ppal sum of £—— & intt & the secs for the same as is hinafter contd. *The operative clauses will be similar to those in Prec.* LX., *with the varions for an endorsed deed indicated in* p. 207, *note, & except that the conson will be,* "in conson of the premes." IN WITS, &c. (*a*).

LXX.

PREC. LXX.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *by* TRUSTEES *of* BUILDING SOCIETY (*b*).

Recitals.

PARTIES, A., B., & C., *trees of Bldg Socy* (hinafter called "the sd trees"), 1; D., *mtgor,* 2; E., *transferee,* 3. *Recite mtge by D. to trees for securg subscriptions, &c., accdg to the rules.* AND WHAS the sum required to redeem the sd hds & premes from the

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secd by the indre of mtge of, &c., thrin mentd, & the intt, &c., & the secs for the same were transferred to the sd A., B., & X. upon the terms thrin mentd, & the power of apptg new trees thof was thby vested in the sd H. & W." *Recite death of X., state of mortgage debt, desires of A. and B. to retire, desire to appoint C., D., and E., new trustees, agreement to transfer mortgage. The first witnessing part will be the appointment of C., D., and E. as trustees in the place of A., B., and X.* (*See* Vol. I., APPOINTMENTS OF NEW TRUSTEES). *The second witnessing part will be as in text.*

As to the stamp on the transfer of a mortgage on the appointment of new trustees, see the Stamp Act, 1891, s. 62, and previously to that date, 2 Dav. Prec., part 2, p. 806, note.

(*a*) Notice to be given to the mortgagor. Notice will not, however, confer priority over a person having a better equity, but giving a subsequent notice; *Re Richards,* 45 Ch. D. 589, where the subject of notice in such cases is discussed. See *Hopkins* v. *Hemsworth,* [1898] 2 Ch. 347.

(*b*) See Prec. XXIV., and note thereto. As the original mortgage would usually be to secure payment of monthly contributions, or instalments composed of principal and interest, fines and fees, according to the rules of the society, and this transfer operates to convert it into a mortgage of the ordinary type, a covenant for payment of principal and interest and other provisions to adapt it to the altered circumstances are inserted, see *ante,* p. 125, note.

PREC. LXX.

hinbfe recited indre of mtge is £—— & no more; AND WHAS the sd E. at the reqt of the sd D. has agrd to pay to the sd trees the sd sum of £—— upon havg a transfer of the sd mtge debt & intt thof, & the secs for the same in mner hinafter expd;

Agreement for transfer.

Witnesseth.

NOW THIS INDRE WITNETH that in conson of the sum of £—— to the sd trees pd by the sd E. at the reqt of the sd D. (the rect, &c.), the sd trees, at the reqt of the sd D., & **as trees**, hby assn unto the sd E the sd sum of £—— to wch the sd Socy are entled as redmon moy as afsd, & all intt henceforth to become due for the same, & the benefit of all secs for the same. *Habendum*, to E., absolutely, *Covt for paymt of the sum of* £—— *& intt*, p. 9 *& intt after default*, p. 10.

Assignment of debt.

Further witnesseth.

AND THIS INDRE ALSO WITNETH that for the conson afsd the sd trees at the reqt of the sd D., & **as trees**, do hby grt unto the said E. ALL & SINGR the hds & premes comprd in or conveyed by the hinbfe recited indre of mtge.

Grant.

Habendum, UNTO & TO THE USE OF E., his hrs & assns, dischged from all rt or equity of redmon now subsistg thrin under the hinbfe recited indre of mtge, but subjt to the provo for redmon hinafter contd. *Provo for redmon on paymt of the sum of* £—— *& intt, see* p. 16. AND IT IS hby agrd & decld that the power of sale & other powers & remedies conferred on mtgees by statute shl apply to these psnts in like mner as if the same had been an origl mtge for the sd sum of £—— & intt. IN WITS, &c.

LXXI.

PREC. LXXI.

TRANSFER *of* MORTGAGE *of a* REVERSIONARY INTEREST *in* PERSONALTY *and* POLICY *of* ASSURANCE (*c*) *on the mortgagor's life, the mortgagor receiving a* FURTHER ADVANCE, *and extending the security to* FUTURE ADVANCES, *with provisions for* CAPITALIZING INTEREST *in arrear and charging* COMPOUND INTEREST.

Recitals.

PARTIES, A., *mtgee*, 1; B., *mtgor*, 2; C., *transferee*, 3; *Recite title of B. to revonary share in the funds comprd in his*

(*c*) As to stamp in respect of the policy, see the Stamp Act, 1891, s. 118.

PREC. LXXI.

parents' marre settlemt subjt to their life intts; & to a poly on his life, p. 5; *Mtge to A.*, p. 5, *mutatis mutandis, settg out also the declaron of trust (if any) of moys to be reced by the mtgee; State of mtge debt, no intt being due*, p. 7; *Agrmt for transfer & further advce*, p. 221, *adding after* "ppal sum of £—— " the *words* "and also of any other sum or sums of money wch may be lent to the sd B [his exs, ads, or assns] by or wch may become owing from him [or them] to the sd C. [his exs, ads, or assns]; And it has been further agrd that such arrangement as is hinafter contd shl be entd into with respt to the capitalizg of intt in arrear, and chging intt in the nature of compound intt:

Witnesseth. Assignment of mortgage debt.

NOW THIS INDRE WITNETH that in psuance of the recited agrmt, *conson & rect & assnmt by A. at reqt of B. to C. of the mtge debt & secs as in Prec.* LXI. *Further testatum, Covt. by B. with C. for paymt of aggregate debt & intt on next day for paymt of intt, & future advces*, p. 10; *& intt after default*, p. 10;

Further witnesseth. Assignment of reversion and policy.

AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the consons afsd the said A., **as mtgee**, at the reqt of the sd B., doth hby assn & transfer, & the sd B., **as benefl owner**, doth hby assn and confirm unto the sd C., ALL THE pt, share, and intt assned by the hinbfe recited indre of mtge of & in the trust moys, stks, funds, & secs thrin mentd & of & in the divds, intt, & annl produce thof: AND ALSO the policy of assurance & moys comprd in or mtged by the same indre: AND ALL other the premes thrin comprd or thby assned: [AND ALL & singr other, if any, the pts, shares, & intts whatsr to wch the sd B. is or may become entled of & in the sd trust moys, stks, funds, secs, & premes or any pt thof, or of & in the divds, intt, & annl produce thof]; AND THE full benefit of the powers & provons in the sd indre of mtge contd with respt to the recovery, rect, or obtaing possn of & givg rects & dischges for the sd mtged premes or orwise in relon thto:

Habendum.

TO HOLD the same UNTO the sd C., dischged from all equity of redmon under the sd indre of mtge, but subjt to the provo for redmon hinafter contd, *Provo for redmon*, p. 17, *on paymt of aggregate debt & future advces & intt; Add if desired new covts by B. with C. to keep up the policy*, p. 40.

Proviso for capitalization of interest.

PROVD ALWAYS & it is hby agrd that in case any half-yrly or other paymt of intt upon the moys for the time being owing on this secy (inclusive of any further sum wch may be adved or pd or become owing as afsd, & of any intt wch may be added to ppal by virtue of this psnt provo), or any pt thof resply, shl remain unpd for —— days after the same shl become due, the intt so in arrear shl be added to the ppal moys for the time being owing on this secy, & bear intt after the rate afsd from the half-yrly day when the same became due in the same mner as if the intt so in arrear were a further advce made by the sd C., his exs, ads, or assns, to the sd B., his exs, ads, or assns, on such day, so that the amt of the ppal moys hby secd may accumulate to the extent of the intt wch may remain in arrear as afsd in the way of compound intt by the half-yrly addon of intt, & the covt on the pt of the sd B. hinbfe contd for the paymt of the ppal moys and intt hby secd shall extend to all addons to the said ppal moys arisg from such capitalized intt & the intt to accrue due thron, & the sd mtged premes shl stand chged thwith acedly; [AND IT IS HBY agrd that for the sake of convenice any further advce by the sd C. to the sd A. (other than paymts made for keepg up or renewg the sd poly), shl be made on the half-yrly days hinbfe appted for the paymt of intt under this secy, & shl be in sums of not less than £—— at any one time]: PROVD ALWAYS that nothing hrin contd shl in anywise be deemed to render it obligatory on the said C., his exs, ads, or assns, to make any further advce or paymt to or on acct of the sd B., his hrs, ads, or assns: *Mtgee's indemnity clause*, p. 59. IN WITS, &c. (*a*).

Advances to be made on days appointed for payment of interest.

Transferee not to be bound to make advances.

LXXII.

TRANSFER *of* PART *of* MORTGAGE DEBT *effected by* DECLARATION OF TRUST. *Part transferred to be* POSTPONED *to part retained by* TRANSFEROR (*b*).

PREC. LXXII.

PARTIES, A., *transferor*, 1; B., *assignee*, 2. *Recite mtge & state of mtge debt, & intt being due.* AND WHAS the sd B. has

Recitals.

(*a*) Notice to be given to the trustees of the reversionary interest, and the insurance office; see p. 96, note.

(*b*) As to a transfer of part of a mortgage debt, see 2 Dav. Prec., pt. 2, p. 808, PREC. LXXII.

That part of mortgage-money belongs to assignee.

Witnesseth.

Assignment.

Sum assigned to be postponed.

Rights, remedies, &c., as to whole sum to remain in assignor.

agrd to pay the sum of £—— to the sd A. upon havg paymt of the same with intt secd in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance, &c., *conson*, *receipt*, the sd A., as tree, doth hby declare that he will stand possed of the sum of £——, pt of the sd ppal sum of £—— owing on the secs hinbfe mentd with all intt henceforth to become due for the sd sum of £——, in trust for the sd B.: PROVD ALWAYS & it is hby agrd that the sd sum of £—— & the intt thron shl be postponed in order of priority of chge to the sum of £——, the remaining portion of the sd sum of £—— and the intt thron: AND FURTHER that the rt of receivg & givg dischges for the pchase-moy of any premes sold under the sd mtge, & also the rt of enforcg by action, foreclosure, or other pcdg, the paymt of the sd mtge debt of £——, & every or any pt thof, & the intt for the same & genlly all rts, remedies, & powers under the sd mtge secs, or in relon thto, shl be solely vested in the sd A., his exs, ads, & assns, it being intd that the rt of the sd B., his exs, ads, & assns, to the sd sum of £—— shl not confer upon him or them the character & rts or remedies of mtgees, or in any mner interfere with or lessen the rts, remedies or powers of the sd A., his exs, ads, or assns, agst, over, or in relon to the sd mtged premes, or the pson or psons liable to pay the same mtge debt or any of them: AND IT IS HBY agrd that the sd A., his exs, ads, or assns, shall be at liberty to transfer the sd mtge debt of £——, & the secs for the same, as & when he or they shl think fit, subject to the condon that he or they shl give notice to the transferee of the trust hereby declared concerning the same sum of £——, & the intt thereon, & shl also give notice of such transfer to the sd B., his exs, ads, or assns, or some or one of them, or send such notice to the residence or place of business in England of him or them or one of them, & so that the transferee or transferees shl succeed to the powers (including the power now being conferred) and rts of the pson or psons making such transfers: AND IT IS HBY further agrd that the sd B., his exs, ads, or assns, shl

Who shall have discretion as

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note, and *ante*, p. 183. Instead of the provision for postponement there might be a provision that "the sd respive sums of £—— & £——, & the intt thof resply shl rank *pari passu*, & witht any preferce or priority one over the other."

have no rt to require the sd mtge to be called in or orwise to interfere as to the time or mode of realisg the secs or any of them, or getting in or receivg the mtge moy, all which mres shl remain wholly in the discron of the sd A., his exs, ads, or assns, & that the sd A., his exs, ads, or assns shl not be liable for any involuntary losses wch may be incurred in or about any such mres or orwise in relon to the premes, or be by any means deprived of the benefit of the stipulons hinbfe contd as to the respive order of priority of the sd sums of £—— & £——, & that the sd sum of £——, & the intt thron, shl not constitute a debt from the sd A., his hrs, exs, or ads, & shl only be recoverable from him or them out of the surplus, if any, of the moys recovered by him or them in respt of the sd mtge wh shl remain after paymt of his or their costs, chges & expenses, & satisfon of the sd sum of £—— & the intt thron. In wits, &c.

to calling in mortgage debt, &c.

And not be liable for involuntary losses.

LXXIII.

TRANSFER *by* Supplemental Deed *of* Mortgage *of* Freeholds Preparatory *to a* Consolidation Deed (*a*).

Parties, A., *mtgee*, 1; B., *mtgor*, 2; C., *transferee*, 3; supplemental to an indre, dated, &c., & made, &c., being a mtge of freehd hds, situate, &c., for securg &c. (hinafter called the mtge): *Recite state of mtge debt, all intt havg been pd*, p. 7; *Agrmt for transfer*, p. 7; *form* xvii: NOW THIS INDRE WITNETH, that in psuance of the recited agrmt, *conson*, p. 9, *transfer of the mtge debt & future intt with the benefit of the power of sale & other secs as in Prec.* LX.: AND THIS INDRE ALSO WITNETH, &c., *Grt by A. at reqt of B. of freehds to C., subjt to redmon, &c., as in Prec.* LX. In wits, &c.

(*a*) As to consolidation deeds, see Elph. Introd. Conv., 212.

LXXIV.

PREC. LXXIV.

DEED CONSOLIDATING *several* MORTGAGES *transferred to a person who pays them off, a* FURTHER ADVANCE *being made to the Mortgagor.*

Recitals. Title of mortgagor (*a*).

PARTIES, A., *mtgor*, 1; B., *transferee*, 2. WHAS the sd A. is seised or entled for an este in fee simple in posson to the —— & hds first and secondly hinafter descd & hby grted, subjt as to the hds first hinafter descd to a mtge debt of £—— & intt secd by an indre of mtge dated the —— day of ——, & subjt as to all the sd hds hinafter descd to a mtge debt of £—— & intt secd by an indre of mtge dated, &c., being a mtge for securg the sum of £—— & intt, & such further advces as are thrin mentd, but all intt on the sd sevl ppal sums of £—— & £—— has been pd up to the day of the date of these psnts:

Agreement for loan.

AND WHAS the sd B. has agrd to lend to the sd A. the sum of £——, *the total sum now adveed*, upon havg the repaymt of the same with intt at the rate hinafter mentioned secd in mner hinafter appearg:

Agreement for transfer.

AND WHAS upon the treaty for the sd loan it was agrd that the sd sevl mtge debts of £—— & £——, makg togr £——, shd be pd off out of the sd sum of £——, *the total sum now adveed*, & that the sd sevl mtge debts & intt, & the secs for the same, shd be transferred to the sd B. in mner hinafter mentd:

Transfer.

AND WHAS in pt pformce of the sd agrmt by an indre bearg date the day bfe the date of these psnts, & made betn C. of the first pt, the sd A. of the second pt, & the sd B. of the third pt, after recitals by wch it appeared that the

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(*a*) As to consolidation, see Vol. I., p. 494. Where there are several prior mortgages, the short particulars of them, and the transfer to the present mortgagee, may very conveniently be given in a schedule; in which case this recital of the mortgagor's title and the subsequent recital of the transfers will be much shortened by referring to the schedule. Compare the next Precedent.

Effect of consolidation on suretyship.

Where a surety has concurred in a mortgage both by pledging his personal credit and also by mortgaging his lands or other property, the effect of a deed consolidating that and other mortgages, with a fresh covenant to pay the whole amount of the mortgage debts at a latter date, is not only to discharge the surety from his personal liability (*Bolton* v. *Buckenham*, [1891] 1 Q. B. 278), but also to release the property which he had pledged or charged (*Bolton* v. *Salmon*, [1891] 2 Ch. 48), unless the original mortgage contains the usual provisions to the contrary.

The *ad valorem* stamp will be 6*d*. per cent. on the further advance, Stamp Act, 1891, s. 87 (3).

sd mtge debt of £——, & the secs for the same, were then vested in the sd C., but that all intt on the sd sum of £—— had been pd up to the date of the indre now in recital, *formal recital of transfer of mtge debt of £—— & secs, Vol. I.*, p. 361, *the transfer being taken in the form given in the last Prec: similar recital of transfer of the other mtge debt & secs*: NOW THIS INDRE WITNETH that in further psuance of the recited agrmt & in conson of the sevl sums of £—— & £—— pd to the sd C. & D. resply by the said B., at the reqt of the sd A., in mner afsd, & of the further sum of £—— now pd to the sd A. by the sd B., the paymt & rect in mner afsd of wch sd sums of £—— & £——, makg togr the sd sum of £——, the sd A. doth hby acknowe, *Covt by A. for paymt of total sum & intt*, p. 9: *& intt after default*, p. 10: AND THIS INDRE ALSO WITNETH that in further psuance of the recited agrmt, & for the conson afsd the sd A., **as benefl owner**, doth hby grt & confirm unto the sd B., First, *pcels from first recited mtge:* And secondly, *other pcels in secondly recited mtge; Covt agst registron*, p. 50, *form* XXXVI: TO HOLD all the sd premes UNTO & TO THE USE of the sd B., his hrs & assns, subjt to the sd secs for the sd sevl mtge debts of £—— & £——, wch with such secs have been transferred to the sd B. as afsd, & so that all the same secs, includg the respive powers of sale thrin contd, shl continue on foot for the benefit of the sd B., his exs, ads, & assns, & for securg to him or them the whole of the sd ppal sum of £——, *the total advce*, hby secd, & the intt thron: And so that all the sd premes hby grted shl be subjt to the provo for redmon hinafter contd: *Provo for redmon on paymt of aggregate sum & intt*, p. 16; *Covt to insure & repair if appropriate*, p. 42; *Covt agst registron*, p. 50, *form* XXXVI: *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

Witnesseth.

Covenant for payment.

Further witnesseth.

Grant.

Parcels.

Habendum.

To the use of transferees so as to keep alive the old securities.

LXXV.

PREC. LXXV.

CONSOLIDATION DEED, *Short form, where the* ORIGINAL MORTGAGOR *is* DEAD, *and a* FURTHER ADVANCE *is made to his* EXECUTORS, *they covenanting to pay the aggregate sum and interest.*

PARTIES, A. & B., "hinafter called the exors," 1; C., *mtgee*, hinafter called the mtgee, "wch expression, &c.," *see* p. 61, *note*, 2.

Witnesseth. Consideration.

WITNETH that in conson of the sevl sums the amts whof are specified in the first column of the first schdle hto being resply owing by the este of X. deced on the sevl mtges resply made by the sevl indres, the dates whof & pties whto are specified in the second column of the same schdle, of the hds now vested in the exors as exors of the will of the sd X. wch was proved by the exors on the —— day of —— in the —— &c., the parlars of wch hds are contd in the second schdle hto, & in conson of the mtgee havg this day at the reqt of the exors pd to the sevl psons previously entled to such mtge debts resply the amts thof resply, & havg taken transfers of such mtge debts & of the secs for the same resply by the sevl indres, the dates whof & pties whto are specified in the third column of the sd first schdle hto & in conson of the sum of £—— havg been pd by the mtgee to the exors for the pposes of the este of the sd X. deced & the due admon thof, the paymt & rect, &c.,

Covenant for payment (*a*).

THEY the exors do hby jtly & sevlly, &c., *covt for paymt of the aggregate debt & intt after default*, pp. 9 & 10; AND FURTHER that the sd hds & premes mentd & comprd in the sd 2nd schdle hto & all other, if any, the hds & premes comprd in the sd sevl indres specified in the 2nd & 3rd columns of the first schdle hto or any of them shl be a secy for the paymt to the mtgee of as well the said sum of £—— upon the exon hrof pd to the exors as afsd, as also of the sd sevl sums of moy the amts whof are resply specified in the 1st column of the sd 1st schdle hto, makg togr the sd aggregate sum of £—— hinbfe

That hereditaments shall be security for aggregate sum.

(*a*) Executors would not usually covenant for payment unless they are beneficially interested; if they do not covenant, a clause, excluding personal liability, should be added, as at p. 38, *supra*, and a charge of interest after default, p. 31, should be added after the habendum.

The powers of personal representatives over personal estate, which include a power to mortgage it, can be exercised over real estate, L. T. A. 1897, s. 2 (2).

covted to be pd & the intt of such respive sums, & that the same hds & premes shl not be in any wise redeemed or redeemable but on paymt to the mtgee of the whole of the sd aggregate ppal sum of £—— & intt for the same accdg to the covt in that behalf hinbfe contd: *Provo for redmon & reconvce of* "the premes hby chged," "To the use of the exors, their hrs & assns, upon the trusts then subsistg or capable of taking effect thrin under the sd will," *on paymt by* "the exors, their hrs, exs, ads, or assns" [*other usual mtge covts &c.*]: PROVD ALWAYS & it is hby agrd & decld that the remedies of the mtgee under the sd sevl mtge secs mentioned in the first schdle hto & these psnts shl be cumulative & not mutually restrictive. *Covt agst registron*, p. 50, *form* XXXVI.; *Mtgee's indemnity clause*, p. 59. IN WITS, &c.

Proviso for redemption.

Mortgagee's remedies to be cumulative.

[*First schdle of mtges, &c., in 3 columns.*]

[*Second schdle of pcels.*]

LXXVI.

TRANSFER *of a* MORTGAGE *to a* TRUSTEE *so as to keep it on foot for the benefit of a* TENANT FOR LIFE *who pays it off,* PART *of the property having already been* RECONVEYED (*b*).

Parties, A., *mtgee*, 1; B., *tenant for life*, 2; C., *tree*, 3. *Recite mtge*, p. 5; *Settlemt of equity of redmon under wch B. is tenant for life, Vol. I.*, p. 362: *Reconvce of pt of the hds; State of mtge debt*, p. 7: AND WHAS the said B. is desirous of paying off the sd mtge debt, & of havg the same assned to the sd C. as a tree for him the sd B., so as to keep the same on foot as a subsistg chge on the hds remaing subjt thto, & the sd A.

Recitals.

Agreement.

(*b*) Compare the Precedent of an assignment of a legacy to a trustee for the tenant for life, Vol. I., p. 597. A tenant for life paying off a charge has *primâ facie* a charge on the inheritance which will not be barred by the Statute of Limitations during his life, as he has both to pay and receive the interest on the charge, *Burrell* v. *Egremont*, 7 Beav. 205; *Topham* v. *Booth*, 35 Ch. D. 607. As to the failure of the tenant for life to keep down the interest, as affecting his right to require the mortgagee to transfer the mortgage debt and premises to a third person, under the C. A., 1881, s. 15, see *Alderson* v. *Elgey*, 26 Ch. D. 567.

PREC. LXXVI.

has at his reqt agrd to accept paymt of the sd ppal sum & to exte such transfer accdly: NOW THIS INDRE WITNETH that in psuance of the recited agrmt, *conson, rect,* the said A. as mtgee at the reqt of the sd B., doth hby assn and transfer unto the sd C., THE SD ppal sum of £——, with the intt henceforth to accrue due thron, & the full benefit of every covt & provon contd in the sd indre of mtge, & all other secs for the same; TO HOLD the same UNTO the sd C., IN TRUST for the sd B., as his own moys, & to be assned & disposed of as he shl direct, & in the meantime to be kept on foot as a subsistg chge for his benefit upon the hds subjt thto: AND THIS INDRE ALSO WITNETH that in further psuance of the recited agrmt, & in conson of the premes, the sd A., as mtgee, at the reqt of the sd B., doth hby grt unto the sd C., ALL & SINGR, the messes, lands, tenements, hds, & premes, comprd in & assured by the hinbfe recited indre of mtge of, &c., except such pt or pts thof as were conveyed and reled by the hinbfe recited indre of the —— day of ——, AND (by way of convce & not of exception) all other, if any, the hds now remaing vested in the sd A., subjt to redmon under or by virtue of the sd indre of mtge, TO HOLD the same UNTO & TO THE USE of the sd C., his hrs & assns, NEVS IN TRUST for the sd B., & to be conveyed & disposed of as he shl direct, but subjt to the equity of redmon subsistg in the same premes upon paymt of the sd sum of £—— & the intt thof. IN WITS, &c.

Witnesseth. Assignment. Mortgage debt. Habendum. To trustee. In trust for tenant for life. Further witnesseth. Grant. Parcels. Habendum. To use of trustee in fee upon trust for tenant for life.

LXXVII.

PREC. LXXVII.

TRANSFER (*endorsed*) *of* EQUITABLE MORTGAGE *by* DEED, *the transferors being* TRUSTEES *and the transferee the* BENEFICIARY (*a*).

PARTIES, A. & B., *equitable mtgees*, 1; C., *transferee*, 2.

Recitals.

WHAS the within mentd sum of £—— remains owing on the secy of the within written indre of equitable mtge with intt thron from the —— day of —— last: AND WHAS the said C.

(*a*) Compare Precedent LXIX., p. 223.

has become entled in equity to the said mtge debt & intt, & is desirous of havg the same, togr with the sd secy, transferred to him in mner hinafter expd: NOW THIS INDRE WITNETH that in conson of the premes the said A. & B., as mtgees, at the reqt of the sd C., do hby assn unto him the sd C. ALL THAT the sd ppal sum of £—— secd by the within written indre of equitable mtge, & the intt now due & henceforth to become due for the same: TOGR with the deeds, evidces, & writgs mentd in the schedle to the sd indre of mtge, & the benefit of the covt or undertakg by the sd X. thrin contd for the exon of a formal or legal mtge for securg the sd ppal sum & intt & orwise & all other secs for the same ppal sum & intt: TO HOLD the same unto the sd X. absolutely. IN WITS, &c. (*b*).

Witnesseth.

Assignment.

Habendum.

LXXVIII.

TRANSFER *under* HAND *only of an* EQUITABLE MORTGAGE *created by deposit of* DEEDS *and* AGREEMENT (*c*). *A short form by indorsement.*

PREC. LXXVIII.

I, the within-named A., *mtgee,* in conson of the sum of £—— now pd to me by B., *transferee,* of, &c. (*rect*), do hby assn to the sd B. the within mentd sum of £——, with the intt thron, as from the —— day of —— last, & henceforth to become due, TOGR WITH the within mentd deeds & writgs, AND WITH the benefit of the chge & undertakg by the within-named C., *mtgor,* in the within-written mem contd: AND I undertake that I, my exs or ads, will, if required, exte & deliver to the sd B., his exs, ads, or assns, at his or their cost, a formal & effectual transfer by deed of the sd ppal sum & intt, & the secs for the same, in such form & with such provons as may be reasbly required. AS WITS my hand this —— day of ——.

(*b*) Notice to be given to the mortgagor.

(*c*) See Precedent XLVII., p. 189. Where the original agreement was not under seal, a transfer in this form would probably suffice, but the stamp would be the same as if the transfer were made by deed.

LXXIX.

PREC. LXXIX.

TRANSFER *of* REGISTERED BILL OF SALE *of chattels, the* MORTGAGOR *joining to* COVENANT *for payment only* (*a*).

Recitals.

Witnesseth.

Parties, A., *mtgee*, 1; B., *mtgor*, 2; C., *transferee*, 3; supplemental to an indre, dated, &c. (hinafter called the sd bill of sale); *Recite state of mtge debt, agrmt for transfer*, p. 7. NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c., *assnmt of debt*, p. 210. AND THIS INDRE FURTHER WITNETH that in psuance, &c., & for the conson afsd the sd A. **as mtgee**, at the reqt of the sd B., doth hby assn (*b*) unto the sd C., ALL & SINGR the fixtures, furniture, fittgs, stk-in-trade, goods, chattels, effects & premes comprd in or now subjt or hrafter to become subjt at law or in equity to the sd bill of sale, *habendum to C. subjt to equity of redmon*, p. 17, *form* III; *Covt by B. with C. for paymt of ppal & intt*, pp. 9 & 10, *mutatis mutandis.* IN WITS, &c.

LXXX.

PREC. LXXX.

RECONVEYANCE *by* MORTGAGEE *in* FEE *of* FREEHOLDS, *by* ENDORSEMENT *on or* ANNEXATION *to the Mortgage.* VARIATIONS *where* RECITALS *are* OMITTED (*c*), *and where the Mortgage comprised* FUTURE ADVANCES.

Recitals.

Intention to pay off.

Parties, A., *mtgee*, 1; B., *mtgor*, 2: *Recite state of mtge debt, all intt being pd*, p. 7: And WHAS the sd B. is desirous of

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(*a*) See note on the Bills of Sale Acts, p. 146, *et seq.* A transfer of a bill of sale does not require registration, *Horne* v. *Hughes*, 6 Q. B. D. 676; *Ex parte Turquand*, 14 Q. B. D. 636.

(*b*) The grantor only covenants for payment, and is not made to join in the assignment of the chattels as a confirming party, lest his so doing should give rise to the contention that the deed is a *new* bill of sale, so as to be obnoxious to the Act of 1882.

(*c*) As to reconveyances, see 2 Dav. Prec., part 2, pp. 276, *et seq.*; Elph. Introd. Conv., 218, *et seq.*

Where the equity of

Where the equity of redemption is encumbered, the mortgagee cannot be required to re-convey the legal estate to the mortgagor without the consent of

PREC. LXXIX.

paying off the sd ppal sum of £——, & of having the within-mentd hds & premes reled & reconveyed in mner hinafter expd; *or,* "WHAS all ppal moys & intt wch were at any time owing on the secy of the within-written indre (*d*) have been fully pd off & dischged, as the sd A. doth hby admit, & the sd B. is desirous of havg the within-mentd hds & premes reled & reconveyed in mner hinafter expd": NOW THIS INDRE WITNETH that in conson of all intt on the sd sum of £—— havg been pd as afsd, & of the sum of £—— now pd by the sd B. to the sd A. the rect whof is hby acknowed as being in full dischge of all ppal moys & intt secd by, or now owing under the within-written indre, [*or if the repaymt of the mtge moy is recited, say,* in conson of the premes], the sd A. as mtgee

Variation.

Witnesseth.

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the incumbrancers, or without reserving their priority on the face of the conveyance, *Teevan* v. *Smith*, 20 Ch. D. 724; *West London Commercial Bank* v. *Reliance, &c., Society*, 29 Ch. D. 954.

redemption is encumbered.

If there has been a transfer, the reconveyance may be endorsed on the transfer; if endorsement is not convenient (as it would not usually be unless the parties have the same solicitor), recitals may be saved by making it supplemental or annexed to the mortgage or transfer, as in the case of a further charge, see p. 200, note, where the variations required in that case are indicated.

As to endorsing or annexing reconveyance.

If the deed is framed without recitals, it should commence, "WITNETH that in conson of all intt on the within mentd sum £—— havg been pd up to the date of these psnts & of the."

Variation where recital omitted.

The C. A., 1881, contains in 3rd Schedule, part III., a short form of reconveyance (see *infra*, p. 245), which may be used for freeholds or leaseholds, where the mortgage was in the statutory form given in that schedule; and may be varied or added to as circumstances require, see s. 29. As to the use of the statutory forms, see p. 78, note; p. 218, note.

As to statutory form of reconveyance.

Where the mortgage money has been paid but no reconveyance executed, the mortgagor becomes from the date of payment a tenant at will to the mortgagee; and the legal estate of the latter is extinguished by adverse possession of the mortgagor during the statutory period; *Sands to Thompson*, 22 Ch. D. 614. As to a reconveyance by a building society, see p. 121, note. As to keeping alive a mortgage paid off by the owner of the equity of redemption, see *Thorne* v. *Cann*, [1895] A. C. 11.

As to the stamp on a reconveyance, see the Stamp Act, 1891, Sched. tit. "MORTGAGE"; *infra*, p. 246, note.

A discharge of a registered charge is to be made in form XLIII., 1st schedule L. T. R., but the Registrar may accept and act upon any proof of satisfaction of a charge which he may deem sufficient, L. T. R. 112.

Registered land.

(*d*) Where the mortgage comprised future advances the following addition should be inserted here for the purpose of ascertaining the *ad valorem* duty on the reconveyance, which is payable on "the total amount or value of the money at any time secured."

"And wch ppal moys did not at any time exceed £——."

PREC. LXXX.

Grant. Parcels. Habendum. To use of mortgagor free from mortgage.

doth hby grt & rele unto the sd B., ALL & SINGR the hds & premes comprd in or assured by the within-written indre, or wch are now by any means (*a*) vested in the sd A. subjt to redmon by virtue of the same indre, TO HOLD the same UNTO & TO THE USE of the sd B., his hrs & assns subjt to the leases, agrmts for leases & tenancies affectg the sd respive premes (*b*), but dischged from the sd sum of £——, & the intt thron, & all moys now or at any time owing on the secy of, & from all chges, claims & demands under the within-written indre, or of anything relatg to the premes. IN WITS, &c.

LXXXI.

PREC. LXXXI.

RELEASE *by* TWO *sets of* MORTGAGEES *of* COPYHOLDS *held of two manors from* CHARGES *created by* CONDITIONAL SURRENDER, *and by* COVENANT *to* SURRENDER.

Recitals. No surrender made. Intention to pay off. Satisfaction to be entered up. Witnesseth.

PARTIES, A., B., & C., *first mtgees*, 1; D., E., & F., *second mtgees*, 2; G. & H., *trees of mtgor's will. Recite first mtge by covt to surrender, & condonal surrender psuant thto, Vol I.*, p. 359; *Second mtge by covt to surrender:* AND WHAS no surrender has ever been made in psuance of the covt contd in the lastly hinbfe recited indre; *Will of X. mtgor, devisg his real este to G. & H. in trust, & apptg exs, death & probate, Vol. I.*, pp. 366, 374; *State of mtge debt, all intt pd*, p. 7: AND WHAS the sd G. & H., as such trees as afsd, are desirous of paying off the sd sums of £—— & £——; AND WHAS satisfon of the sd condonal surrender to the sd A., B., & C. is intd to be forthwith entd on the Ct rolls of the respive manors of wch the sd copyhd hds are held; NOW THIS INDRE WITNETH that in conson

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Variation for accretions.

(*a*) If the mortgage is an old one and there may have been accretions to the property arising from inclosures, &c. say, "or wch are now by means of any inclosure, exchange, allotmt, award, or orwise vested, &c."

(*b*) Where a tenant for life redeems, add here, "& subjt to such rt or equity of redmon as is vested in any pson other than the *tenant for life*." Where the mortgagee has notice of a second mortgage, the habendum will be made subject to it.

of the sum of £—— now pd by the sd G. & H. to the sd A., B., & C., & of the sum of £—— now pd by the sd G. & H. to the sd D., E., & F., in full satisfon of all moys remaing due to the sd A., B., & C., & the sd D., E., & F. resply, on the secy of the sd hinbfe recited indres of mtge resply (the rect, &c.), the sd A., B., & C., as mtgees, & the sd D., E., & F., as mtgees, do resply hby rele unto the sd G. & H. as such trees as afsd: ALL & SINGR the customary or copyhd hds & premes comprd in the sd respive hinbfe recited mtge secs, *Habendum*, UNTO & TO THE USE of the sd G. & H., their hrs & assns, to the intent that the sd G. & H., their hrs & assns, may henceforth hold the sd premes, UPON SUCH TRUSTS as are by the sd will of the sd X., deced, expd concerng the hds thby devised, or such of the same trusts as are now subsistg & capable of taking effect, Dischged from all claims & demands of the sd A., B., & C., & the sd D., E., & F. resply, or any of them, by virtue of the sd respive hinbfe recited secs, or orwise howsr. IN WITS, &c.

Release.

Parcels.

Habendum to use of trustees.

Upon trusts of will.

Free from mortgages.

LXXXII.

WARRANT *to enter up* SATISFACTION *on a* CONDITIONAL SURRENDER.

PREC. LXXXII.

Manor of ——
Coy of ——

I, A., *mtgee*, of ——, do hby admit that I have reced all ppal moys & intt, the paymt whof was secd to me by a condonal surrender dated the —— day of —— by B., *mtgor*, of, &c., of certn copyhd or customary hds, situate, &c., held in the sd manor; & I authorise & direct the steward of the sd manor to enter satisfon of the sd condonal surrender on the rolls of the sd manor, & for so doing this shl be his sufft warrant & authority. Dated this —— day of ——.

(Signed) A.

PREC. LXXXIII.

LXXXIII.

RECONVEYANCE *by* INDEPENDENT DEED (*a*) *by several* MORTGAGEES (TRUSTEES) *of* FREEHOLDS *to the* HEIR *or* DEVISEE *of the mortgagor there having been a* FURTHER CHARGE *and a* TRANSFER *of the Original Mortgage.* VARIATIONS *for* PART *of the property having been* SOLD *with the* CONCURRENCE *of the* MORTGAGEES, *and where the* PRINCIPAL *has been paid off by* INSTALMENTS, *and for a* RECONVEYANCE *to the* USES *of a settlement or will.*

PARTIES, A., B., & C., *mtgees*, 1; D., *heir or devisee of mtgor, or*, D. & E., *trees of will or settlemt, & grtees to uses*, 2. Recitals. *Recite mtge by K. to X., statg the convce & provo for redmon, & settg out the pcels at length, Vol. I.*, p. 358; *Further chge, Vol. I.*, p. 361; *Transfer, statg the assnmt of the debt, & the convce of the este, Vol. I.*, p. 361; *& the new provo for redmon (if any), & if any of the transferees have died, the jt acct clause (if any)* (*b*): Death of mortgagor, and devolution of equity of redemption. AND WHAS the sd K. died on the —— day of —— intestate, leaving the sd D. his eldest son & heir at law, *or recite will of K., settg out the devise of the equity of redmon to D., or in strict settlemt, D. & E. being the*

(*a*) The reconveyance might be endorsed on, or made supplemental to the transfer, see p. 237, note; in which case the recitals up to and including the transfer would be omitted. If the equity of redemption is settled the tenant for life should be a party, and the agreement and payment should be made with his concurrence.

Variations where part of land sold. (*b*) Where part of the property has been sold, add, "AND WHAS the sd K., with the privity of the sd A., B., & C., in the yr —— sold a portion of the hds comprd in the sd indres, of, &c., *the mtge, further chge, & transfer*, consistg of a pce of land containg —— acres, situate, &c., to Y., & in the yr ——, with the like privity, sold a further portion thof consistg of, &c., to Z., & on the complon of the sd sevl sales, the sd A., B., & C., joined in the sevl convces of the same lands & hds to the respive pchasers thof, but the pchase moys payable for the same were recd by the sd K., except as to £——, wch was pd to & recd by the sd A., B., & C., in pt dischge of the ppal sum of £—— secd by the sd indres of, &c., *the mtge, further chge, & transfer*, whby the same was reduced to £——."

PREC. LXXXIII.

trees; death & probate, Vol. I., p. 374; *if K. died after* 1897 *add assent of exors of K. to descent or devise; or recite strict settlemt D. & E. being the trees* (c); *State of mtge debt*, p. 7, *form* XIII., *note:* AND WHAS the sd D. has [D. & E. have] agrd to pay off & dischge the sd mtge debt [out of moys in their hands as trees of the sd will, *or*, "settlemt," applicable for that ppose], & has [have] reqted the sd A., B., & C. to rele & reconvey the sd hds & premes in mner hinafter appearg: NOW THIS INDRE WITNETH that in conson of the sum of £—— now pd by the sd D. [& E., out of moys in their hands as such trees as afsd,] to the sd A., B., & C., in full dischge of all ppal moys & intt owing on the secy of the hinbfe recited indres of, &c., *the mtge, further chge, & transfer* or any of them (the rect whof the sd A., B., & C., do hby acknowe) they the sd A., B., & C., as mtgees, do resply hby grt & rele unto the said D., *or* D. & E., ALL & SINGR the hds & premes comprd in or assured by the hinbfe recited indre, &c., *the transfer* (*d*), or wch are now by any means vested in the sd A., B., & C., or any of them, subjt to redmon under or by virtue of the sd indres of, &c., *the mtge, further chge, & transfer*, or any of them, *Haben-*

Intention to pay off.

Witnesseth.

Release.

Parcels.

Habendum.

(*c*) Where the principal has been paid off by instalments, continue from here as follows:—"AND WHAS the sd D. has [D. & E., out of moys in their hands as trees of the sd will [settlemt] applicable for that ppose have] pd to the sd A., B., & C., the sevl sums of £—— & £—— on the —— day of ——, & —— day of ——, in pt dischge of the sd mtge debt, & has [have] pd to them the sum of £——, the balce thof, on the exon of these psnts, And all intt on the ppal moys for the time being owing on the secy of the sd indres of mtge, further chge, & transfer, up to the date of these psnts, has been fully pd, as they, the sd A., B., & C., do hby acknowe; AND WHAS the sd A., B., & C., have agrd, at the reqt of the sd D. [& E.], to exte such rele & reconvce as is hinafter contd: NOW THIS INDRE WITNETH, that in psuance of the sd agrmt, & in conson of all ppal moys & intt secd by the hinbfe recited indres of mtge, further chge, & transfer, havg been fully pd & satisfed in mner afsd, &c."

Variation where money paid by instalments.

(*d*) If part of the property has been sold, add, "save & except such pts thof as have been sold & conveyed to the respive pchasers thof, as hinbfe mentd, & (by way of convce & not of exception), all other, if any, the hds wch are now, &c."

Variation where part of land sold.

PREC. LXXXIII. *dum to D. in fee, subjt to leases, &c., if any, dischged from claims under the* " mtge, further chge, & transfer, or any of them," *as in Prec.* LXXX. [*or Habendum,* UNTO the sd D. & E., & their hrs, *subjt, &c., & dischged as above,* TO THE USES, upon the trusts, & subjt to the powers & provons by the hinbfe recited will of the said K., *or,* " indre of settlemt of, &c.," decld, or expd, concerng the sd premes, or such of the same as may be subsistg or capable of takg effect (*a*).] IN WITS, &c.

LXXXIV.

PREC. LXXXIV.

RECONVEYANCE *on behalf of* LUNATIC MORTGAGEE (*b*).

PARTIES, A., " the duly apptd committee of the este of L., a pson of unsound mind & the pson apptd to convey as hinafter mentd," 1; B., &c. (mtgor), 2, *recite mtge, Vol. I.,* p. 358, *State of mtge debt, some intt being due,* p. 7, *form* XIV. AND WHAS the sd B. is desirous of paying off the sd sum of £——. AND WHAS by an order made in the mre of L., a pson of unsound mind, & in other mres & dated the —— day of ——, 18—, it was ordered that on the sd B. paying into ct, to the credit of L., a pson of unsound mind, the sd ppal sum of £——, & paying the sd A. as such committee as afsd all intt due on the sd ppal sum of £—— secured by the sd indre dated the —— day of ——, 18—, the sd A. shd convey in the place of the sd L. to the sd B. or as he shd direct the hds comprd in the recited indre of mtge for the este vested in the sd L. as mtgee thrin dischgd from the ppal moy & intt thby secd, & that such reconvce shl be settled & approved by the master in lunacy; *recite paymt of ppal into ct; recite master's approval,* see Vol. I., p. 576. NOW THIS INDRE WITNETH that in psuance of the sd order and in conson of the sd sum of £——

(*a*) *Or,* " To the uses, &c., to wch the equity of redmon of the sd premes now stands limd & settled under, &c., or orwise."

(*b*) In case of reconveyance the lunatic mortgagee does not reconvey by his committee, having regard to s. 135 (4) of the Lunacy Act, 1890.

now pd by the sd B. to the sd A., *rect,* & in conson of the sd sum of £—— so pd into ct as afsd, *continue as in Prec.* LXXX., *referrg to* "the sd indre of mtge," *instead of* "the within written indre." IN WITS, &c.

PREC. LXXXIV.

LXXXV.

RECONVEYANCE *by* ENDORSEMENT *of* FREEHOLDS *and* LEASEHOLDS *where the* MORTAGEE *and* MORTGAGOR *have both* DIED *and the reconveyance is by the* PERSONAL REPRESENTATIVES *of the mortgagee to the* TRUSTEES *of the Will of the mortgagor.* VARIATIONS *where the* MORTAGEE *died* BEFORE 1882, *and the reconveyance of the* FREEHOLDS *is by the* PERSONAL *representatives of the mortgagee with or without the concurrence of his* HEIR *or* DEVISEES (*c*).

PREC. LXXXV.

PARTIES, A. & B., *legal psonal repves* [*& devisees*] *of mtgee,* 1; [C., *heir of mtgee,* 2]; D., E., & F., *exs of mtgor,* 3; D. & E., *trees of mtgor,* 4. *Recite will of* H. *mtgee, apptg A. & B. exs* [*& devisg mtged estes to them*], *death & probate, Vol. I.,*

Recitals.

(*c*) By the C. A., 1881, s. 30, as altered by the Copyhold Act, 1894, s. 88, re-enacting the Copyhold Act, 1887, s. 45, on the death after 1881 of a sole mortgagee of freeholds or copyholds to which the mortgagee has not been admitted, or an estate *pur autre vie* limited to the heir, the legal estate vests "notwithstanding any testamentary disposition," like a chattel real, in the personal representatives of the mortgagee, who are therefore the proper persons, not only to receive and give a discharge for the mortgage money, but to reconvey the legal estate. It is conceived that if the mortgagee was to make a specific bequest of the mortgage debt, together with the mortgaged estate, the executor might under this section assent to the bequest so as to vest the legal estate in the legatee without any conveyance. By the Copyhold Act, 1894, s. 88, copyholds to which the mortgagee has been admitted are excepted from the C. A., and vest accordingly in the heir or devisee, who must therefore reconvey in cases where the mortgagee died after 1882; see above, p. 208, note.

Reconveyances by personal representatives under V. and P. A., 1874, or C. A., 1881.

If the mortgagee died between the 7th August, 1874, and the 1st January, 1882, the case would be within the V. and P. Act, 1874, s. 4 (which is repealed by the above-mentioned section of the C. A., 1881, but remains in force as to persons who died before 1882), whereby the personal representative is enabled on redemption to reconvey freeholds, or copyholds to which the mortgagee has been admitted. The effect of this enactment is that in such case either the personal representative or the heir or devisee can reconvey; but it appears advisable where possible to join both in the reconveyance.

p. 374; [*or death of H. intestate, Vol. I.*, p. 375, [*leavg C., his heir at law,*] *admon to A. & B.*]; *Will of K., mtgor, whby he devised & bequed,* "all his real & psonal este, includg in such devise & beqt the equity of redmon of the hds & premes comprd in the within-written indre, unto the sd D. & E., their hrs, exs, ads, & assns, upon the trusts in the sd will mentd, & the sd testor thby appted the sd D., E., & F., his exs"; *Death of testor & probate* [*assent*]; *State of mtge debt*, p. 7:

Intention to pay off.

AND WHAS the sd D. & E., as such trees as afsd, are desirous of paying off the sd sum of £——, & havg such rele & reconvce of the sd mtged premes as is hinafter contd:

Agreement by executors of mortgagor to join.

AND WHAS the sd D., E., & F., as such exs as afsd, have agrd to join in these psnts for the ppose of signifying their assent to the sd beqt of the leasehd [& freehd] premes comprd in the within-written indre:

Witnesseth.

NOW THIS INDRE WITNETH that in conson of the sum of £—— upon the exon hrof pd by the sd D. & E. as such trees as afsd out of moys formg pt of the este of the sd testor to the sd A. & B., the rect whof is hby acknowed, the sd A. & B. **as mtgees** (*a*), [by the diron of the sd D., E., & F. as such exs as afsd (*b*)] do hby grt & rele [the sd C. **as tree** (*a*), by the diron of the sd A. & B., doth hby grt, & the sd A. & B. **as mtgees** (*a*) do hby grt, rele, & confirm], unto the sd D. & E., ALL & SINGR the freehd —— hds, &c., *Pcels as in Prec.* LXXX., [*where the reconvce is by the psonal repves only, under the Vendor & Pchaser Act*, 1874, *omit the words,* "vested in the sd A. & B.,"]

Grant.

Freeholds.

Habendum to trustees upon trusts.

Habendum unto & to the use of D. & E. in fee dischged, &c., as in Prec. LXXX., "UPON THE TRUSTS, & subjt to the powers & provons in the sd recited will of the sd K., decld & contd of & concerng the real este thby devised in trust as afsd, or such of the same as are now subsistg & capable of takg effect":

Further witnesseth.

AND THIS INDRE ALSO WITNETH that for the conson afsd the sd A. & B., **as mtgees** (*a*), by the diron of the

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Covenants for title.

(*a*) A covenant against incumbrances may be implied by making the personal representatives convey as such, or **as mtgees**; see the C. A., 1881; s. 7 (1, F.), Vol. I., p. 407; the latter expression being more correct, if they join also as devisees of mortgaged estates. The heir, if a party, may convey **as tree** or **as mtgee,** for the same purpose, the former expression being more appropriate.

(*b*) These words will be added if the mortgagor died after 1897 and the executor has not previously assented to the devise.

PREC. LXXXV.

Assignment. Leaseholds. Habendum to trustees.

sd D., E., & F. as such exs as afsd, do hby assn [*if the mtge was by demise add,* surrender] & rele unto the sd D. & E., ALL & SINGR the leasehd hds & premes comprd in or assnd [demised] by the within-written indre, or wch are now by any means vested in the sd A. & B., subjt to redmon by virtue of the same indre: [*for a mtge by assnmt say,* TO HOLD the sd premes hby assned UNTO the sd D. & E., for all the residue now unexpired of the term of yrs grted by & subjt to the rents & covts by the lessee reserved by & contd in the within recited indre of lease] [*for a mtge by demise omit the words in the precedg bracket & say,* to the intent that the term of yrs grted by the within-written indre may merge in the term of yrs grted by the within-recited indre of lease & become extinguished, & that the sd premes may henceforth be held by the sd D. & E., their exs, ads, & assns,] dischged, &c., *as above, upon the trusts, &c., decld by the will,* "concerng the leasehd premes thby bequed in trust as afsd," *as above.* IN WITS, &c.

LXXXVI.

PREC. LXXXVI.

STATUTORY RE-CONVEYANCE *of mortgage of* FREEHOLDS *or* LEASEHOLDS *under the 29th section of the* CONVEYANCING ACT, 1881 (*c*).

THIS INDRE made by way of statutory re-convce of mtge the —— day of ——, 18—, BETN A., of, &c., *mtgee or transferee,* of the one pt, & B., of, &c., *mtgor,* of the other pt, supplemental to an indre made by way of statutory [transfer of] mtge, dated the —— day of ——, 18—, & made betn, &c., WITNETH that in conson of all ppal moy & intt due under that indre havg been pd, of wch ppal & intt A. hby acknowes the rect, A. **as mtgee** hby conveys to B., ALL the lands & hds now vested in A. under the sd indre. TO HOLD TO (*d*) & TO THE USE of B. in fee simple, dischged from all ppal moy & intt secd by & from all claims & demands under the sd indre. IN WITS, &c.

(*c*) See p. 237, note.

Variations for leaseholds.

(*d*) For leaseholds mortgaged by assignment, say, "TO HOLD to B., for the residue now unexpired of the term of yrs grted by & subjt

LXXXVII.

PREC. LXXXVII.

RECONVEYANCE *of* PART *of property in* MORTGAGE *on* PART-PAYMENT *of* DEBT, *the property consisting of a* LIFE ESTATE *in* REALTY, *and* SEVERAL POLICIES *on the mortgagor's life* (*a*).

Recitals. *PARTIES*, A. & B., *mtgees*, 1; C., *mtgor*, 2. *Recite mtge of mtgor's life este in realty by demise for* 99 *years if he shd so long live, & pols on his life, & further chge*: AND WHAS the sum of £—— has since the exon of the last recited indre been pd by the sd C. to the sd A. & B., in pt dischge of the sd aggregate mtge debt of £——, and there remains the ppal sum of £—— togr with intt thron from the —— day of —— last owing on the secy of the sd indres of mtge & further chge, AND WHAS the sd A. & B., at the reqt of the sd C., & in conson of the sum of £—— havg been pd in redmon of the sd mtge debt as afsd, have agrd to exte such rele & re-assnmt of pt of the premes comprd in the sd indres of mtge & further chge as is hinafter contd, Witnesseth. NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of the premes the sd A. & B., **as mtgees**, Habendum. do hby surrender & rele unto the sd C., *pcels*, TO HOLD the same unto the sd C., & his assns dischged from the sd mtge debt of £—— & the intt thron & from all the moys due or at any time owing &c., & to the intent that the sd term of 99 yrs created by the sd indre of mtge shl merge & be extinguished in the life este of him the sd C. in the premes, Further witnesseth. AND THIS INDRE ALSO WITNETH that, in further psuance of the sd agrmt, & for the conson afsd, the sd A. & B., **as mtgees,** do hby Habendum. assn & rele unto the sd C., ALL THAT poly of assurce &c., TO HOLD the same unto the sd C., dischged, &c., PROVD ALWAYS

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to the rents & covts of the lease under wch the premes are held, dischged, &c., *as in text*"; for a mortgage by demise say, "to the intent that the term of yrs grted [assned] by the sd indre may merge in the term of yrs grted by the lease under wch the premes are held & become extinguished, & that the premes may henceforth be held by B., dischged, &c., *as in text*."

(*a*) The stamp on a reconveyance of part of the property in mortgage is 10*s*., see Vol. I., p. 453, note.

Title deeds. On the reconveyance of part of the property the mortgagee should give an acknowledgment for production of title deeds to the mortgagor.

PREC. LXXXVII.

& it is hby decld that nothing hrin contd shl prejudice or affect the secy of the sd A. & B., their exs, ads, & assns, under the sd indres of mtge & further chge upon the hds, pols, & premes remaing subjt thto for the paymt of the ppal moys remaing owing to them as afsd & the intt thron. *Acknmt for prodon,* p. 60. In wits, &c.

LXXXVIII.

PREC. LXXXVIII

SURRENDER *by Mortgagees of a* Long Term *on redemption, the* Mortgage *having been created by* Sub-demise. Declaration *of* Satisfaction *of the* Principal *term.*

Parties. Recitals.

Parties, A. & B., *mtgees,* 1; X., *owner in fee of equity of redmon,* 2; Y., *survivg tree,* 3. *Recite that under settlemt dated, &c., estes vested in Y. & Z. for* 1000 *yrs upon trust, &c. Mtge by Y. & Z. by demise to A. & B. for* 999 *yrs: death of Z. that ppal moy of £—— owing but all intt pd: that X. is desirous of paying off &c.,* p. 244, *mutatis mutandis.* NOW THIS INDRE WITNETH that in conson of the sd sum of £—— now pd by the sd X. to the sd A. & B. (the rect, &c.), they the sd A. & B., **as mtgees,** do hby at the reqt of the sd X., assn, surrender, & rele unto the sd Y., First all the hds comprd in & demised by the sd indre of mtge, except such pts thof as have been pted with by exchange or enclosure, *or as the case may be,* & Secondly (by way of surrender & rele & not of exception) all other the hds comprd in the sd indre of mtge, or wch are now by any means vested in the sd A. & B. subjt to redmon thrunder to the intent that the residue of the sd term of 999 yrs may merge and be extinguished in the sd term of 1000 yrs, & that the sd mtged premes may be dischged from all moys secd by & from all claims & demands under the sd indre of mtge, And the sd Y. doth hby declare to & with the sd X., that he the sd Y., his exs, ads, & assns, will henceforth stand possed of the hds comprd in the sd term of 1000 yrs Upon trust for the sd X., his hrs & assns, to the intent that the sd term may become attendant on the inhance of the hds thrin comprd & may henceforth cease as a satisfied term. In wits, &c.

Witnesseth.

Surrender of sub-term.

Declaration of satisfaction of principal term.

LXXXIX.

PREC. LXXXIX.

RECONVEYANCE *by Mortgagee of* PERSONALTY (*a*).

Recitals.

Intention to pay off.

Wit-nesseth.

Release.

Habendum to mortgagor.

PARTIES, A., *mtgee*, 1; B., *mtgor*, 2. *Recite the mtge, statg the convce & provo for redmon, settg out the pcels at length, Vol. I.*, p. 361; *State of mtge debt*, p. 7; AND WHAS the sd B. is desirous of payg off the sd ppal sum of £——, & of havg the sd mtged premes reled & reassned in mner hinafter appearg: NOW THIS INDRE WITNETH, &c., *conson & rect as in Prec.* LXXX., p. 237, *mutatis mutandis*, the sd A. **as mtgee,** doth hby assn and rele unto the sd B. ALL & SINGR the —— & premes comprd in or assned or grted by the hinbfe recited indre of mtge of the —— day of ——, or wch are now by any means vested in the sd A. subjt to redmon by virtue of the same indre: TO HOLD the same premes UNTO the sd B., dischged, &c., *as in Prec.* LXXX., *mutatis mutandis*. IN WITS, &c.

XC.

PREC. XC.

ENDORSED RECEIPT *on* DISCHARGE *of* EQUITABLE MORTGAGE (*b*).

I, the within named A., *mtgee*, do hby acknowe that I have this day reced from the within named B., *mtgor*, the sum of £—— being the full amt of all ppal moys, intt, & costs secd by the within written mem [indre]: AS WITS my hand, this —— day of ——.

(*a*) If a charging order has been obtained by the mortgagee or a *distringas* placed by him on the fund it will, of course, be discharged or withdrawn on payment of the mortgage debt and interest; see R. S. C., 1883, Order 46: Seton, 417 *et seq.*

Receipt of equitable mortgagee sufficient.

(*b*) It is conceived that a mere receipt in this form is sufficient to discharge an equitable mortgage of any property, whatever may be its form, including even a formal second mortgage by conveyance subject to redemption (the legal estate being in the first mortgagee); see 2 Dav. Prec., part 2, p. 277; and the receipt appears not to require a receipt stamp, as it falls within the 11th exemption under the head RECEIPT in the schedule to the Stamp Act, 1891, see *id.* p. 278, and p. 302, note; but the receipt must not contain any words amounting to a *release* or discharge of the mortgage within the Stamp Act, 1891, Sched. tit. MORTGAGE, which would make it chargeable as a reconveyance.

XCI.

APPOINTMENT *of* Receiver contemporaneously *with the Mortgage* (*c*).

PREC. XCI.

Recitals.

Parties, A., *mtgor,* 1; B., *mtgee,* 2; K., *recer,* 3. *Recite mtge of even date,* p. 5, *statg the covt for paymt of ppal, & intt after default, the convce subjt to redmon, & any provons such as the provo for redon of intt on punctual paymt affectg the rate or time of paymt of the intt, & any provons for keepg up fire or life policies, describg the pcels as,* "the sevl —— & hds situate in the parishes of ——, & coy of ——, a parlar & rental whof is set forth in the schdle hto"; And whas upon the treaty for the mtge effected by the hinbfe recited indre it was agrd that the sd K. shd be appted recer of the rents & profits of the sd premes, with the powers hinafter given to him, & that the deed apptg him such recer shd contain such covts & provons as are hinafter contd: NOW THIS INDRE WITNETH that in psuance of the recited agrmt, & in conson of the premes the sd A., with the concurrce of the sd B., doth hby appt the sd K., *continue recership clauses,* p. 52, *or shorter clause relying on the statute,* p. 56. In wits, &c.

Agreement.

Witnesseth.

Appointment of receiver.

[*Schdle of pcels.*]

XCII.

APPOINTMENT *by a Mortgagee of a* Receiver *under* Lord Cranworth's Act *or the* Conveyancing Act, 1881 (*d*).

PREC. XCII.

Recitals.

Parties, A., *mtgee,* 1; B., *recer,* 2. *Recite the mtge as in last Prec., & the event wch has made the statutory power*

(*c*) See p. 52, note.

Power to appoint receiver under Lord Cranworth's Act.

(*d*) By Lord Cranworth's Act of 1860 (23 & 24 Vict. c. 145), ss. 11 and 17 to 24 (which was repealed by the C. A., 1881, s. 71, but remains in force as to mortgages prior to 1882), a mortgagee (where the mortgage is by deed) of *hereditaments* of any tenure is empowered to appoint or obtain the appointment of a receiver in either of the following cases: (1) after the expiration of one year from the time appointed for payment of the principal money; (2)

PREC. XCII.

exercisable, if the apptmt is made under Lord Cranworth's Act, & no pson is named in the mtge to be appted recer, say :

Notice given.

" AND WHAS the sd A. on the —— day of —— last by writg duly delivered [affixed on a conspicuous pt of the sd mtged premes], required K., of, &c., who is the pson [one of the psons] entled to the sd premes subjt to the sd mtge to appt a fit & pper pson to be recer of the same premes, but no apptmt has been made of a recer psuant to such notice : AND WHAS the sd A. is desirous of apptg the sd B. to be recer of the rents & profits of the sd mtged premes ;" NOW THIS INDRE WITNETH that the sd A. by virtue of the power conferred on him by the statute on that behalf, & of every other power in this behalf him enablg, doth hby appt the sd B. to be recer of the rents, profits,

Desire to appoint.

Appointment of receiver.

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when some interest is in arrear for six months ; (3) on the omission by the mortgagor to pay any premium of insurance payable under the mortgage. The mortgagee may appoint as receiver any person named in the mortgage for that purpose, or if no person is named, he may in writing delivered to any person interested in the equity of redemption or affixed on the mortgaged property require such person to appoint a proper person as receiver, and if no such appointment be made within ten days, he may in writing appoint any person he thinks fit. The Act is defective in not protecting the tenants in case of irregularity in the appointment ; and in not giving the receiver any power to pay ground rents, or expenses of necessary repairs ; and it only enables him to pay interest " accruing " due, and not arrears.

Power to appoint receiver under C. A., 1881.

By the C. A., 1881 (which applies to mortgages by deed executed since 1881), ss. 19, 24, a mortgagee of *any property*, real or personal, is empowered when the mortgage money has become due and the power of sale has become exercisable (as to which see p. 20, note) to appoint any person he thinks fit receiver ; but no person paying money to the receiver need inquire whether any case has happened to authorise him to act.

Functions and duties of receiver.

A receiver appointed under either Act is the agent of the person entitled to the equity of redemption, who is solely responsible for his acts (*qy.* as to the effect of this where there is a second mortgage) ; he can recover and give receipts for the rents or income over which he is appointed receiver in the name of either the mortgagee or the person entitled to the equity of redemption to the full extent of the interest which the mortgagor could dispose of. The receiver is entitled to retain for his remuneration and in satisfaction of his expenses a commission at such rate, not exceeding 5 per cent. on the gross moneys received, as is specified in his appointment, or if none is specified, then at the rate of 5 per cent., or (under the C. A., 1881) at such rate as the Court may allow. He is also to insure and execute necessary and proper repairs of any of the mortgaged property which is insurable, but if he is appointed under Lord Cranworth's Act is only to insure if so directed in writing by the mortgagee, and if appointed under the C. A., 1881, he may pay for repairs directed in writing by the mortgagee.

The appointment under either Act may be by writing not under seal, but it would usually be by deed.

& income of all the ppty comprd in or subjt to the hinbfe recited indre of mtge; AND IT IS HBY agrd that the commission of the sd B. as such recer shl be at the rate of —— p.c. p.a. on the gross amt of the moy reced. [AND THE SD A. doth hby direct the sd B. to insure & keep insured agst loss or damage by fire out of the moys reced by him all ppty of an insurable nature wch is comprd in or subjt to the sd mtge (*a*).] IN WITS, &c.

Commission fixed.

Direction to receiver to insure.

[*Schdle to pcels.*]

XCIII.

DEED *extending* LEASING POWERS *of* MORTGAGOR *under Conveyancing Act,* 1881, *where the Mortgage was* AFTER *the Act.* ENDORSED *on* MORTGAGE (*b*).

PREC. XCIII.

PARTIES, A. & B., *mtgees,* 1; C., *mtgor,* 2: D., *grtee to uses,* 3.

Recital.

WHAS the sd A. & B., at the reqt of the sd C., have agrd to give him such powers of leasg in relon to the hds hinafter descd (being pt of the premes comprd in the within-written indre) as are hinafter contd & hby conferred: NOW THIS INDRE WITNETH that in conson of the premes the sd A. & B., as mtgees, at the reqt of the sd C., do hby grt & convey, & the sd C. doth hby confirm unto the sd D., *pcels,* being the freehd premes first descd in & grted by the within-written indre, TO HOLD the same unto the sd D., & his hrs, TO THE USE & intent

Witnesseth.

Grant.

Habendum.

(*a*) The words in these brackets are only necessary if the receiver is appointed under Lord Cranworth's Act.

(*b*) See the C. A., 1881, s. 18. As sub-section 14 of section 18 does not enable the statutory leasing powers to be extended otherwise than by the mortgage deed itself, and sub-section 16 only applies to mortgages made before the Act, the extension of the leasing powers cannot, as it seems, where the mortgage was after the Act, be afterwards effected by a mere agreement operating under the Act. There is nothing, however, to prevent the mortgagor and mortgagee from conferring the necessary powers by deed, which in order to have the desired legal operation should take the form not of a mere agreement, but of a conveyance of the legal estate to uses, conferring the necessary leasing powers (so that the lease would operate by appointment of the use in the old way) and subject thereto to the use of the mortgagees, subject to the equity of redemption. The deed may conveniently incorporate the statutory provisions with the required modifications as in the text.

Extension of statutory powers.

that the sd C., his hrs & assns, shl have such powers of leasg over or in relon to the same premes as are hinafter expd, & subjt to such powers & to any leases wch may be grted in psuance thof To the use of the sd A. & B., their hrs & assns, subjt to the equity of redmon subsistg under the within-written indre on paymt to the sd A. & B., their exs, ads, or assns, of the ppal sum of £—— remaing owing to them on the secy thof, & the intt due & to become due for the same, & so that subjt as afsd the secy effected by the within-written indre, & the powers & provons thrin contd, shl remain subsistg & in full force. AND IT IS HBY AGRD & decld that it shl be lful for the sd C., his hrs & assns (by way of extension or enlargemt of the powers of the 18th section of the Convcg & Law of Ppty Act, 1881, the powers & provons whof are intd to apply to & be incorpd in these psnts with the extensions & subjt to the modificons hrin expd) at any time to demise, &c., *see* p. 46, *form* XXXII., *& notes thto, mutatis mutandis.* IN WITS, &c.

Extension of mortgagor's powers of leasing.

XCIV.

PREC. XCIV.

AGREEMENT *between* MORTGAGEES *and other* PERSONS *interested as to deposit of* TITLE-DEEDS *with* BANKERS *on behalf of all Parties* (*a*).

PARTIES, A. & B., *mtgees*, 1; C. & D., *other pties inttd*, 2; E., *mtgor*, 3; WHAS the sevl messes, lands, & hds wch are shortly descd in the first schdle hto have recently been conveyed by or by the diron of the sd E., to the sd A. & B., their hrs & assns, by way of mtge for secg the sum of £—— & intt: AND WHAS the sevl deeds & munimts specified in the second schdle hto relate not only to the sd hds descd in the sd first schdle hto, but also to other hds in or to wch the sd C. & D. are inttd or entled, & on the treaty for the sd loan it was agrd that the sd deeds & munimts shd be deposited at the bankg house of Messrs. —— at ——, & that such agrmts shd be entd into in relon to the same as are hinafter contd, & accdly the sd deeds

Recitals.

Mortgage.

Deeds relate to other hereditaments.

(*a*) See also the forms of agreement for similar objects in 2 Dav. Prec., part 2, pp. 751, 753.

& munimts have been deposited at the sd bankg house in a box marked, &c. : NOW THIS INDRE WITNETH and it is hby agrd betn the pties hto, so far as they are resply authorised or enabled in this behalf, THAT the sd sevl deeds & munimts shl remain in the custody of the sd Messrs. ——, & that the same, or any of them, shl not be removed or withdrawn from their custody by any of the pties hto, or any pson or psons claimg under or in trust for them or him resply, or any of them, witht the previous consent in writg of the others or other of the sd pties, or the pson or psons claimg under them or him resply : BUT NEVS the same shl at all times be open to the inspon of all or any of the sd pties hto, or any pson or psons claimg under or in trust for them or him resply, or their respive solors, any of whom shl & may at all times be at liberty to make copies, abstracts, extracts of or from the same or any of them : AND IT IS HBY further agrd that in case at any time or times hrafter it shl be necy to remove the sd deeds & munimts or any of them, in order to produce the same unto or for or on behalf of the sd pties hto of the first or second pts, or any pson or psons claimg under or in trust for them or him resply, or any of them, or to their or any of their counsel, solors, or agents, or in the course of any judicial or other pcdgs or orwise on their respive behalf, then, & in such case such pson or psons as the sd Messrs. —— shl from time to time appt for that ppose shl at the cost of the pson or psons requirg such prodon attend with all & every or any of the same deeds & munimts & produce the same at such time & place & for such ppose as the pson or psons requirg such prodon shl by such notice in writg direct or appt. IN WITS, &c.

Witnesseth.

Agreement.

Deeds to remain at bankers,

But be open to inspection.

Further agreement that deeds may be removed for the purpose of production.

[*Two Schdles.*]

XCV.

PREC. XCV.

DEED REDUCING *the* INTEREST *on a Mortgage Debt.* ENDORSED *on* MORTGAGE (*a*).

PARTIES, A., *mtgee*, 1; B., *mtgor*, 2. *Recite state of mtge debt*, p. 7. NOW THIS INDRE WITNETH and it is hby agrd & decld that as from the sd —— day of —— last, intt at the rate of —— p.c. p.a. (instead of at the rate of —— p.c. p.a. as provd by the within-written indre) shl be payable for the sd ppal sum of £——, or for so much thof as shl for the time being remain unpd, & that the within-written indre shl henceforth operate as if the rate of intt thby reserved had been —— p.c. p.a. instead of —— p.c. p.a., but in all other respts shl remain unaffected by these psnts. IN WITS, &c.

Witnesseth.

XCVI.

PREC. XCVI.

UNDERTAKING *of* MORTGAGOR *or his* SOLICITOR *to pay* COSTS *on* COMPLETION *of Mortgage, or on* SECURITY *proving* DEFECTIVE *as to* VALUE *or* TITLE (*b*).

To Messrs. ——,

Gentlemen,

I undertake to pay your costs & chges, includg surveyors valuon fees, upon the proposed loan by clients of yours of £——, at —— p.c. p.a., on secy of a freehd este belongg to me, *or*, to ——, situate at ——, on complon of the mtge, or in case the secy eir as regards value or title [or orwise] shl be such as your clients [as trees] may be advised that they ought not to accept.

I am, &c.

(*a*) The manner of altering the terms of a registered charge will be found in L. T., R. 111.

(*b*) See, as to what expenses are covered by this, *Re Blakesley*, 32 Beav. 379; *Sweetland* v. *Smith*, 1 Cr. & M. 585.

XCVII.

DEED *by a* TENANT FOR LIFE SHIFTING *an* INCUMBRANCE *affecting land* SOLD *under the* SETTLED LAND ACT, 1882, *to* OTHER *Parts of the Settled Estate* (*c*).

PREC. XCVII.

Recitals.

Parties, A., *tenant for life*, 1; B., *incumbcer*, 2. *Recite incumbce affectg*, "the hds descd in the 1st schdle hto togr with other hds, but not comprisg or affectg the hds descd in the 2nd schdle hto;" *Devolon* (*if any*) *of the incumbce to B.*; *Settlemt by wch A. became*, "tenant for life in posson of the hds descd in the 1st & 2nd schdles hto togr with other hds subject to the sd *incumbce*;" AND WHAS the sd A., as tenant for life in posson under the sd settlemt, has recently with the concurrce of the sd B., sold the sd hds descd in the first schdle hto, & by an indre bearg even date with but exted bfe these psnts, & made, &c., the same hds have been conveyed to the pchaser free from the sd sum of £—— & intt, *or*, "the sd rent-chge of £——," *or*, "the sd anny of

Sale of part of land subject to charge.

Power of shifting incumbrances under S. L. A.

(*c*) By the S. L. Act, 1882, s. 5, the tenant for life as defined by s. 2, or other limited owner as defined by s. 58, under any settlement before or after the Act, is empowered, with the consent of the incumbrancer (which includes the owner of a rent-charge under the Improvement of Land Act, 1864, *Re Strafford and Maples*, [1896] 1 Ch. 235), to charge an incumbrance, affecting land sold or given in exchange or on partition on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold, &c., and by conveyance of the fee simple or other estate or interest, the subject of the settlement, or by creation of a term of years in the settled land or otherwise, to make provision accordingly. See also s. 24 (4, 5, 6). These provisions do not apply to charges created by or in exercise of any power in the settlement, on which no money has been actually raised, as such charges are overreached by the exercise of the statutory powers of sale, &c. (see s. 20 (2)), and are *ipso facto* transferred to and attach upon the moneys received on a sale, &c., and the lands taken on an exchange or partition. A tenant for life can now attain the same object under s. 11 of the Act of 1890, by means of a mortgage of part of the settled land for the purpose of discharging an incumbrance on another part—a power which may in some cases be available where the power of shifting an incumbrance is not. But in his exercise of this (as of all other powers under the Acts) he is placed in a fiduciary position by s. 53 of the Act of 1882; and the Court will in a proper case interfere to restrain him from exercising the power: *Hampden* v. *Earl of Buckinghamshire*, [1893] 2 Ch. 531. As to the exercise by the tenant for life of these and other powers under the Acts, see *Re Stamford*, 43 Ch. D. 84. Notice of the intention to make the charge must (unless waived under the S. L. Act, 1884, s. 5 (3)) be given to the trustees and their solicitor under s. 45; and as s. 5 (1) of the S. L. Act, 1884, does not apply, the notice must be a specific one according to *Re Ray*, 25 Ch. D. 464.

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£——," & from all claims & demands under the sd indre of, &c.; *Recital that ppal with some intt is due*, p. 7, *or*, "AND WHAS the sd rent-chge *or* 'anny' has been pd up to the —— day of ——;" AND WHAS the sd B. concurred in the sd convce of even date hrwith upon the terms that the paymt of the sd sum of £—— & the intt now due, & henceforth to become due for the same, *or*, "the sd rent-chge," *or*, "anny," shd be [further] secd in mner hinafter appearg: NOW THIS INDRE WITNETH, that in psuance of the sd agrmt & in conson of the premes the sd A., **as benefl owner**, by virtue of the powers of the S. L. Acts, 1882 to 1890, & of every other power in this behalf him enablg, doth hby chge, the hds descd in the 2nd schdle hto, with the paymt to the sd B., [his hrs, exs, ads, & assns], of the sd sum of £—— & all intt now & henceforth to become due for the same, *or* "with the paymt of the sd rent-chge, *or*, 'anny,' of £—— from the sd —— day of —— last, upon the respive days & in the mner provd by the sd indre of, &c.," in exoneron & substiton for the sd hds descd in the 1st schdle hto [& so that the sd B., his [hrs] exs, ads, & assns shl have & may exercise all such & the like powers & remedies for the recovery & obtaing paymt of the sd rent-chge, *or*, "anny," agst or in respt of the sd hds descd in the sd 2nd schdle hto, or any pt thof, as were created or conferred by the sd indre of, &c., agst or in relon to the sd hds descd in the sd 1st schdle hto, or may be conferred or arise by statute by virtue of these psnts (*a*)]. *Further testatum.* "The sd A.,

Agreement.

Witnesseth.

Charge.

Conveyance.

(*a*) This refers to the C. A., 1881, s. 19, which, as regards gross sums, gives powers of sale, &c., to mortgagees, and also to s. 44 of the same Act, which gives to the owner of a rent-charge or other annual sum charged on land, remedies by distress and entry, or by limiting a term to trustees for raising the annual sum and all arrears, which last-mentioned section applies, as the annual sum must, it is conceived, be considered for this purpose as "arising under" the present deed. For a rent-charge or annuity the deed will stop here, unless it is thought fit to give express powers of distress and entry (for forms of which see *infra*, SETTLEMENTS), or to limit a term to trustees or the owner of the rent-charge or annuity as further security. In the latter case continue as follows:—

Limitation of term to secure rent-charge.

"*Further testatum*, the sd A., **as benefl owner**, by virtue, &c., *as above*, doth hby bargain, sell, & demise (*see as to this form*, p. 98) the sd hds descd in the 2nd schdle hto to the sd B., for the term of —— yrs to commce from the date of these psnts witht impeachmt of waste, to the intent that the sd B., his exs, ads,

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as benefl owner, by virtue, &c., *as above,* doth hby grt, &c., *convce of hds in second schedle as in Prec I.,* p. 68, *saying,* "subjt to such or the like rt or equity of redmon as the sd hds comprd in the first schdle hto were subjt to immedly bfe the exon of the hinbfe recited indre of even date hrwith on paymt to the sd B., &c., *as above.*" [*Covt by A. with B.,* his exs, ads, & assns, that the sd A. will durg his life in case & so long as the sd sum of £——, or any pt thof, shl remain unpd pay to him or them intt for the same at the rate afsd as from the sd —— day of —— last, by equal half-yrly paymts on the —— day of —— & —— day of —— in every yr (*b*)]: *Mtgee's indemnity clause,* p. 59; *Acknmt & undertakg by A., as to the settlemt & any other munimts material to the mtgee wch are retained by A.* IN WITS, &c.

Covenant for payment of interest.

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or assns, may by & out of the rents & profits of the sd premes or by the sale of timber or mnls, or by mtge of the sd premes, or any pt thof, for the whole or pt of the sd term, raise the sd rent-chge *or,* 'anny' chged thron, & all arrears thof, & all costs incurred by him or them in respt of the premes. *If so agrd, add covt by A. for paymt, during his life, & ackmt & undertakg by him as to the settlemt, &c., as in the text.*"

(*b*) A power of sale and provisions for insurance if proper might be inserted: otherwise the statutory provisions (see p. 20, note, p. 42, note) would apply; see the last note.

MORTMAIN AND CHARITY.

I. (*a*).

PREC. I.

CONVEYANCE *to* TRUSTEES *of a* SITE *for a* CHURCH (*b*).

PARTIES, A., *donor*, 1; The Rt Revd Father in God, B., by Divine permission Lord Bishop of —— & ordinary of the

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(*a*) Several useful precedents on charitable trusts will be found in 4 Bythewood and Jarman Conv., and in 2 Prideaux Conv.

(*b*) See note below. The conveyance must be executed in the presence of two witnesses, it must be enrolled in the central office, and, if voluntary, it must be made at least 12 calendar months before the death of the grantor: see the Mortmain Act, 1888, Part II. Prior to consecration the site will be conveyed to the Ecclesiastical Commissioners.

NOTE ON CHARITABLE CONVEYANCES.

The Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), which in effect re-enacts the prior law, and is amended as to the definition of land by the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), must be consulted where it is intended to make a conveyance to a corporation for any purpose, or to convey land or personalty to be laid out in the purchase of land for charitable (see s. 13 (2)) purposes. Part I. of the Act renders land assured to a corporation without licence from the Crown or of a statute for the time being in force liable to forfeiture. Licences from the Crown may be obtained in proper cases by application to the Board of Trade, ss. 1—3. Part II. of the Act renders every assurance of land or of personalty to be laid out in the purchase of land for charitable purposes void unless (1) the charitable purposes are to take effect immediately; (2) no provision for the benefit of the grantor is made, except a nominal rent, a reservation or grant of mines, minerals, or an easement, covenants as to building, &c., and a right of entry on breach of covenant. The assurance if of land not of copyhold or customary tenure or of personal estate not being stock in the public funds, must be made by deed executed before two or more witnesses, and unless made in good faith for full and valuable consideration, must be made at least twelve months before the death of the grantor; it must also be enrolled in the central office of the Supreme Court within six months after execution, unless in the case of an assurance of land to charitable uses which are declared by a separate instrument, in which case that instrument must be enrolled within six months of the assurance of the land. Parts I. and II. do not apply to an assurance by deed of land of any quantity for the pur-rectory [vicarage] & parish church of ——, 2; C., D., E., F. & G., *trees*, 3. *Recite title of A.*, Vol. I., p. 370. AND WHAS

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Recitals.

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poses of a public park, a school-house for an elementary school, or a public museum, see s. 6 (4) as to what these words respectively include; but a deed containing such an assurance and not made for full and valuable consideration must be executed not less than twelve months before the death of the grantor, and must be enrolled in the books of the Charity Commissioners within six months after execution, s. 6 (2). Part II. of the Act does not apply *inter alia*, s. 7 (2), to "an assurance, otherwise than by will, to trustees on behalf of any society or body of persons associated together for religious purposes, or for the promotion of education, art, literature, science, or other like purposes, of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration;" but the trustees of the instrument may, if they think fit, at any time cause the instrument to be enrolled in the central office.

In considering exemptions from the Act it must be remembered that a power merely to purchase, take, hold, and enjoy land. creates an exemption from Part I., but not from Part II. of the Act. In such a case land can only be acquired for charitable purposes in accordance with the requirements of Part II.: *Nethersole* v. *School, &c., Blind*, L. R. 11 Eq. 1; and *Chester* v. *Chester*, L. R. 12 Eq. 444; cases decided on the repealed Act, 9 Geo. II. c. 36.

Re land.

An assurance of land which is by the Act required to be made by deed may be made by a transfer under the L. T. Acts, 1875, 1897, which is exempted from the provisions as to execution in the presence of two or more witnesses and from enrolment, see the Act of 1888, s. 9. As to the form of transfer of land under the L. T. Acts to a corporation holding under licence in mortmain, see L. T. R. 95, 97. As to the form of transfer of land under the L. T. Acts for charitable uses within the meaning of the Act of 1888, except in cases exempted by s. 7 (1) of that Act, see L. T. R. 96, 97 and Schedule I., form XXXII.

Sites for churches, burial grounds, glebes, &c.

By the Gift for Churches Act, 1803, 43 Geo. 3, c. 108, land not exceeding five acres may be conveyed by deed enrolled for or towards the erecting, rebuilding, repairing, purchasing or providing any church or chapel where the liturgy and rites of the Established Church are used, or a residence for the officiating minister, or the outbuildings, offices, churchyard, or glebe for the same. The consent of the ordinary, or in some cases of the patron, ordinary and incumbent, is required. A *feme covert* without her husband cannot convey under the Act, a disability which is not removed by the M. W. P. A., *Re Smith*, 35 Ch. D. 589. Only one such gift is to be made by any one person, and no glebe exceeding fifty acres is to be augmented by more than one acre. For cases under the Act, see *Re Vaughan*, 33 Ch. D. 187; *Re Smith*, 35 Ch. D. 589; *Re Hendry*, 35 W. R. 730.

Places of Worship Sites Act.

By the Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50), as amended by the Amendment Act, 1882 (45 & 46 Vict. c. 21), corporations (in some cases with certain consents) and certain limited owners may convey by way of gift, sale or exchange, in fee simple, or for a term of years, any quantity not exceeding one acre of land not being part of a demesne or pleasure-ground attached to a mansion-house, as a site for a church, chapel, meeting-house, or other place of divine worship, or for the residence of the officiating minister, or for a burial-place. A form of assurance is given in s. 4 of the Act of 1873. A grant by a

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addl church accommodon is required for the inhabitants of the parish of ——; AND WHAS the sd A. has with the consent of

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tenant for life requires certain consents: see the Act of 1882, s. 2. If the property ceases to be used for the purposes of the Act it is to revert to the lands from which it was severed. The Act of 1873 contains provisions as to payment of the purchase-money and the method of conveyance where the land is settled and in cases of disability. The Act of 1873, s. 5, enables conveyances to be made to the Ecclesiastical Commissioners, or as they shall direct, and so that such conveyances shall take effect under the Church Building Acts.

Ecclesiastical commissioners purchasing under Church Building Acts.

See further as to conveyances for the above purposes 17 Chas. 2, c. 3, s. 8, repealed 1 & 2 Vict. c. 106, s. 15, revived 6 & 7 Vict. c. 37, s. 25; 17 Geo. 3, c. 53, s. 10, extended 28 & 29 Vict. c. 69; 55 Geo. 3, c. 147, repealed as to Ireland 14 & 15 Vict. c. 71; 1 & 2 Vict. c. 106, ss. 70—72, and the Church Building Acts, 1818 to 1884, a list of which is given in 59 & 60 Vict. c. 14. As to conveyances by the lord of a manor of any part not exceeding five acres of the waste thereof for the above purposes see 51 Geo. 3, c. 115, s. 2, repealed as to Ireland 14 & 15 Vict. c. 71; and as to Ecclesiastical Corporations being lords of manors, see 17 Geo. 3, c. 53, s. 21. As to conveyances on purchases made on the requisition of the Ecclesiastical Commissioners, see 58 Geo. 3, c. 45, ss. 36, 38; as amended by 59 Geo. 3, c. 134, ss. 36—38; 3 Geo. 4, c. 72, s. 8; and 1 & 2 Vict. c. 107, s. 9; under 29 & 30 Vict. c. 111, s. 9, the Ecclesiastical Commissioners are authorised to hold lands suitable for annexation to, and to purchase lands for the endowment of, a benefice without licence in mortmain.

Grant under New Parishes Acts to Ecclesiastical Commissioners.

See as to grants to the Ecclesiastical Commissioners under the New Parishes Acts, for the endowment or augmentation of income of ministers or providing any church or chapel: 6 & 7 Vict. c. 37, ss. 12, 22; 7 & 8 Vict. c. 94; where a form of grant which requires enrolment is given in the schedule: 14 & 15 Vict c. 97, s. 24; 19 & 20 Vict. c. 104, ss. 4, 23; extended by 28 & 29 Vict. c. 42, s. 7 to authorise lands or goods to be given for the purpose of purchasing tithes with a view to annexation to a district church.

Registered land.

Where under any Act of Parliament a conveyance to the Ecclesiastical Commissioners would have the effect of vesting land in an incumbent or any other Ecclesiastical Corporation sole and his successors (see 6 & 7 Vict. c. 37, s. 12; 8 & 9 Vict. c. 70, s. 13; 14 & 15 Vict. c. 97, s. 28; 19 & 20 Vict. c. 104, ss. 10, 23; 29 & 30 Vict. c. 111, s. 9) he may be registered as proprietor, L. T., R. 93, see also R. 99.

Grants to Governors of Queen Anne's Bounty.

As to grants to the governors of Queen Anne's Bounty in augmentation of small livings—see 2 & 3 Anne, c. 20 (11 Ruff.), ss. 4, 5; 43 Geo. 3, c. 107; 1 & 2 Vict. c. 20, ss. 20—24, where a form of grant is given, and 28 & 29 Vict. c. 69, s. 4; the deed requires to be enrolled. See the L. T. A., 1897, s. 15 (2), as to land purchased under Queen Anne's Bounty.

Enlargement of churchyards.

As to conveyances of additional land for the purposes of enlargement of churchyards or burial places, see 30 & 31 Vict. c. 133, ss. 4, 5, 9; amended as to s. 9 by 31 & 32 Vict. c. 47, and a form of conveyance given in s. 5 of 30 & 31 Vict. c. 133.

School sites.

As to conveyances of sites for schools for poor persons or for residences of schoolmasters, &c., see the School Sites Acts, 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49; 14 & 15 Vict. c. 24; 15 & 16 Vict. c. 49; for form of assurance, see 4 & 5 Vict. c. 38, s. 10. See Bythewood & Jarman, 4th ed., Vol. IV., p. 17, for special Acts authorising particular bodies to convey for the above purposes.

Grants from societies.

In cases where a grant from a society is in contemplation, enquiry should the sd B. as ordinary of the parish of —— agrd with the sd C., D., E., F. & G. to convey the hds hby assured to them in fee

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be made whether any particular form of conveyance is required by the society.

Some of the larger religious bodies have offices where information can be obtained as to forms adopted by them of conveyances of sites for chapels or charitable purposes. In some cases the trusts of conveyance for the above purposes are not set out at length, but are declared by reference to model deeds which have been enrolled.

Nonconformists.

Information as to Wesleyan trust deeds can be obtained at the Wesleyan Conference Office, 2, Castle Street, City Road, and the forms can be purchased at 66, Paternoster Row. Information as to, and forms of Congregationalist trust deeds, can be obtained from Messrs. Shepheard, 31 and 32, Finsbury Circus. Information as to, and forms of Baptist trust deeds, can be obtained from John Howard, Esq., 42, Old Broad Street, E.C.

Jews.

Nearly all the London synagogues using the Polish or German ritual are governed by the scheme contained in the Local Act (33 & 34 Vict. c. 116) and by bye-laws made thereunder. Information can be obtained at the office of the United Synagogue, 2, Charlotte Street, Portland Place, W. Information as to the Spanish and Portuguese Synagogue can be obtained from Messrs. Lindo & Co., 3 & 4, West Street, City, E.C. Information as to the West London Synagogue of British Jews, commonly known as the "Reform Synagogue," may be obtained from the Secretary, Upper Berkeley Street, Portman Square, W. Information as to the Jewish Board of Deputies and as to Jewish charities generally, may be obtained from Charles Emanuel, Esq., 36, Finsbury Circus, Secretary to the Board of Deputies.

School Board, transfer to.

As to transfers by the managers of an Elementary School to a School Board, see 33 & 34 Vict. c. 75, s. 23; see also the provisions of the Mortmain and Charitable Uses Act, 1888, ss. 6, 7, referred to above.

Sites for various institutions.

By the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112), facilities were given for the conveyance of not more than one acre of land as the site of any of the institutions mentioned in s. 33 a form of grant was given, s. 13. One witness is sufficient and the deed is valid if otherwise lawful, although no consideration is given and although the grantor dies within twelve calendar months after execution: see also 31 & 32 Vict. c. 44, and the provisions of 51 & 52 Vict. c. 42, s. 7 (2), referred to *supra;* and as to conveyances to Technical and Industrial Institutions, see the Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29), ss. 6, 7.

Recreation grounds.

Under the Recreation Grounds Act, 1859 (22 Vict. c. 27), any lands may be lawfully conveyed to trustees to be held by them as open public grounds for the resort and recreation of adults, and as playgrounds for children and youth, and a form of conveyance is given in s. 2 of the Act, the deed does not require enrolment and will be valid notwithstanding the death of the grantor within twelve calendar months after execution, see s. 2.

Parks and museums.

As to conveyances for such purposes, see the Public Parks Schools and Museums Act, 1871 (34 Vict. c. 13); repealed and re-enacted by 51 & 52 Vict. c. 42; and the provisions of s. 6, which are referred to *supra.*

Local authorities.

As to the acquisition of land by a local authority for the purposes of the Public Health Act, 1875 (38 & 39 Vict. c. 55), see ss. 175—178 of that Act; as to the undertaking of a gas company, s. 162; as to that of a market company, s. 168; and as to the public pleasure-grounds, s. 164. As to museums and gymnasiums, see the Museums and Gymnasiums Act, 1891 (54 & 55 Vict. c. 22), s. 11. As to the purchase of land for allotments by a sanitary authority, see the

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Trusts.

simple upon the trusts hinafter decld concerng the same: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the premes he the sd A., with the consent of the sd B., doth hby grt unto the sd C., D., E., F. & G., *pcels, Vol. I.*, p. 385, TO HOLD the same UNTO & TO THE USE OF the sd C., D., E., F. & G. in fee simple upon the trusts hinafter mentd, that is to say in trust that the sd C., D., E., F. & G. & the survors or survor of them or other the trees or tree for the time being of these psnts (hinafter called the trees), shl permit a church to be erected on the sd pce or pcel of land, accdg to plans &

To permit a church to be built thereon.

Allotments Act, 1887, amended by the Allotments Act, 1890. As to the acquisition of small holdings by county councils, see the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), ss. 12, 13; and the rules of 1892 under that Act, and the L. T. A., 1875. As to the acquisition of land by a parish council, see the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 9.

Under the provisions of the Mortmain and Charitable Uses Act Amendment Act, 1892 (55 & 56 Vict. c. 11), s. 6 of the Mortmain and Charitable Uses Act, 1888, is made to apply to an assurance of land by deed to any local authority (defined, s. 2) for any purpose for which such authority is empowered by any Act of Parliament to acquire land, except so much as provides that an assurance by deed made otherwise than in good faith, for full and valuable consideration, must be executed not less than twelve months before the death of the assuror.

Dwellings in populous places.

Under the Working Classes Dwellings Act, 1890 (53 & 54 Vict. c. 16), assurances by deed or will of land which, if assured by will, must not exceed five acres, for providing dwellings for the working classes in populous places as therein defined (s. 1), must be by deed enrolled within six months after execution in the books of the Charity Commissioners, if the land is situated in England or Wales, or registered in the office for the registry of deeds in Dublin if the land is situate in Ireland, and the provisions of Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, do not apply to such assurances.

Public library.

As to assurances of land for the purposes of a public library, see the Public Libraries Act, 1892 (55 & 56 Vict. c. 53), ss. 12, 13.

Institutions exempted from Mortmain Acts.

For a list of institutions exempted from the provisions of the Mortmain Acts, see Bythewood & Jarman, 4th ed., Vol. IV., p. 22, note (*j*).

Empowered to hold in mortmain.

Various incorporated public bodies are empowered to take, purchase, and hold lands without license in mortmain. The chief of these, Guardians of Poor (5 & 6 Will. 4, c. 69, s. 7), burial boards in the metropolis (15 & 16 Vict. c. 85, s. 24), and throughout England (16 & 17 Vict. c. 134, s. 7), drainage boards (24 & 25 Vict. c. 133, s. 66), County Council's Local Government Act, 1888 (51 & 52 Vict. c. 41, s. 79), the Prison Commissioners (40 & 41 Vict. c. 21, s. 6).

Under the Commons Act, 1876 (39 & 40 Vict. c. 56), s. 8, District Councils may acquire by gift, and hold without license in mortmain, on certain trusts, any suburban common, in respect of which they would be entitled to receive notice of an application made to the Board of Agriculture in pursuance of the Act.

Volunteers.

As to the acquisition of land for the use of a Volunteer Corps, see Part V. of the Volunteer Act, 1863 (26 & 27 Vict. c. 65); the Artillery and Rifle Ranges Act, 1885 (48 & 49 Vict. c. 36); the Drill Grounds Act, 1886 (49 & 50 Vict. c. 5), and the Ranges Act, 1891 (54 & 55 Vict. c. 54).

elevons to be approved by the trees, & by the sd A., his hrs or assns: AND ALSO shl use their best endeavours to procure the sd church when so built as afsd, to be licensed or consecrated as a place for the celebron of divine service & for the administron of the sacraments accordg to the liturgy & rites of the Church of England, by the vicar of —— parish church afsd for the time being (hinafter called the vicar) & his curates: [AND IT IS HBY AGRD & DECLD that the sittgs in the sd church shall at all times hrafter be & remain free & unappropriated], *or* [AND ALSO shl with the approval of the vicar let the sittgs in the sd church in such mner & for such prices as the trees shl from time to time think fit, provd that at least one-half of the sittgs in the sd church be free. And shl stand possessed of the moys to arise from the lettg of the sd sittgs upon trust by & out of the same to satisfy all moys due or wch may become due in respt of the complon & bldg of the sd church, with the sittgs & fittgs thrin, & in connon with the licensg or consecron thof, or in any way incident thto, & also all expses incurred in repairg the sd church, & in keepg the same insured from fire, & in purchasg surplices, books, & other things necy for the sd church, & in paying the salaries to the organist, verger, beadle, choristers, or other servants or officers, & all other annual outgs in respt of the sd church as the trees shall think fit, & upon further trust to pay the net annual surplus of the moys to arise from the lettg of the sittings to the vicar for his absolute use]. [PROVD ALWAYS & it is hby decld & agrd that the sd pce of land & heredits shl not, nor shl any pt thof be used for burials, & that no school of any description shl be erected thrupon, or held or carried on in any bldg erected on the sd pce of land witht the licence of the sd A., his hrs & assns]: PROVD ALWAYS & it is hby agrd that it shl be lful for the trees to endeavour to procure the sd church to be made a district church or a district chapel, or a district parish church (as they may think fit): PROVD ALWAYS & it is hby agrd & decld that it shl be lful for the trees to convey & assure the hds hby assured with all the bldgs and erons thron, to any pson or psons or to a Corporation authorized to receive the same for any of the pposes of the Church Building Acts: PROVD ALWAYS & it is hby decld & agrd that the vicar, until the sd church or chapel shl be made a district church or a district chapel, or a district parish church, and aftwds the incumbent for the time being of the sd

To be used for service, &c., in the United Church of England.

Provided that one half of the sittings are free.

The pew rents to be held,

1st. To satisfy any debt in respect of the building of the church, &c.

2nd. And for repairs and insurance, the purchase of surplices, books, salaries.

3rd. To pay the surplus to the vicar.

Burials and schools prohibited.

The trustees may take steps for getting church made a district church.

The trustees may convey the land to a

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corporation authorized to receive same. The incumbent of the parish of —— until the intended church be made a district church, and afterwards the incumbent of the new church, to be always one of the trustees. Quorum. Vicar ceasing to be a trustee.

church or chapel (upon signifying in writg his willingness to act) shl always be one of the trees of these psnts & have the same powers as if he had been one of the origl trees: PROVD ALWAYS that 4 of the trees for the time being, or if the vicar or incumbent be psnt, 3 of the trees shl be a quorum for all the pposes of the trusts created by these psnts, & the decision of a majority of the trees psnt at a meetg shl bind the minority, & in case of an equality of votes the vicar or incumbent if psnt or in his absence the chairman of the meetg shall in addon to his own vote have a castg vote: PROVD ALWAYS & it is hby agrd & decld that upon the resignon or deprivon of the vicar or incumbent he shl cease to be a tree, and that during the suspension from duty of the vicar or incumbent and during the time that his benefice shl be sequestrated he shl not act as a tree, & that when any lay tree resides out of the sd parish of —— for more than 12 consecutive months or openly ceases to be a member of the Church of England he shl cease to be a tree of these psnts: PROVD ALWAYS & it is hby agrd & decld that the number of trees of these psnts shl never be more than seven, & that the lay trees shl never be less than 4. IN WITS, &c.

II.

PREC. II.

AGREEMENT *vesting the* PATRONAGE *of a new* CHURCH *in* TRUSTEES (*a*).

PARTIES, The Rt. Revd Father in God ——, by Divine permission Lord Bishop of —— and ordinary of the rectory [vicarage] & parish church of —— (*a*), 1; A., "the patron of the same rectory [vicarage] & parish church," 2; the Revd B., "rector [vicar] or incumbent of the rectory [vicarage] & parish

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(*a*) This form may be used where, previous to the consecration of a new church, the bishop, the patron, and the incumbent of the parish where the church is or is intended to be built agree to vest the patronage in any corporation, person and persons: see 8 & 9 Vict. c. 70, s. 23, and 11 & 12 Vict. c. 37, s. 4. As to vesting the patronage in a person who endows a chapel of ease when made a distinct parish, see 1 & 2 Will. 4, c. 38, ss. 23, 24; 1 & 2 Vict. c. 107, s. 7. As to the patronage of churches built by private persons or by subscription, see 5 Geo. 4, c. 103, ss. 6 to 12; 1 & 2 Will. 4, c. 38, ss. 2 to 9, 19, 20; 3 & 4 Vict. c. 60, s. 12; 14 & 15 Vict. c. 97, ss. 7 to 15.

See the Benefices Act, 1898 (61 & 62 Vict. c. 48), and note, Vol. I., p. 925.

of —— afsd," 3; C., D., E., F. & G., *proposed patrons*, 4. WHAS for the accommodon & convenience of a certn ption of the inhabitants of the parish of —— afsd a new church is being built at —— in the sd parish of —— upon a site wch has been duly conveyed to the Ecclesiastical Commrs of England under the provons of the Church Bldg Acts: AND WHAS the sd new church is intended to be consecrated by the name of ——: AND WHAS it has been arranged that the patronage or rt of nominatg a minister to the sd new church shl on its consecron be vested in the said C., D., E., F. & G., or the major pt of them as trees, & in the trees for the time being of these psnts: NOW THIS INDRE WITNETH that in psuance of the power vested in them by the Church Bldg Act, 1845 (*b*), & the Church Bldg Act, 1848 (*c*), & of every other power in this behalf them enablg they the pties hto of the 1st, 2nd & 3rd pts do hby resply agree that when & as soon as the sd new church of —— shl have been consecrated the patronage or rt of nominon to the same shl belong to & be exercised by & be vested in them the sd C., D., E., F. & G., their hrs & assns by the names of the trees of the church of ——: PROVD ALWAYS that any pson who shl openly cease to be a member of the Church of England shl no longer be capable of actg as a tree, & a new tree may be appted in his place in the same mner as if he were dead: PROVD ALSO that no pson shl be capable of being appted a tree of these psnts unless he is a member of the Church of England: PROVD ALSO that an apptmt of a new tree of these psnts may be made durg the period of three calr months from the vacancy occurg by the survivg or continug trees or tree & after the lapse of such period by the bishop of the diocese, & that no such apptmt shl be made by the psonal repves of a survivg continug tree: PROVD ALSO that the patronage of the sd new church shl not at any time be vested in more than five psons: AND IT IS HBY AGRD & DECLD that no convce of the rt of patronage hinbfe conferred shl be made for any ppose other than for givg effect to an apptmt of a new tree or new trees of these psnts. IN WITS, &c.

Recitals.

Trustee seceding from Church of England.

Trustee to be member of Church of England.

Appointment of new trustees.

(*b*) 8 & 9 Vict. c. 70.
(*c*) 11 & 12 Vict. c. 37.

III.

PREC. III.

CONVEYANCE *of* LAND *as the* SITE *of a* MISSION HALL (*a*).

PARTIES, A., "hinafter called 'the grtor,'" 1; B., C., & D., "hinafter collectively called 'the trees,'" 2. WHAS it is desired to assure the hds hinafter conveyed or intd so to be as an ecclesiastical charity (*b*) for the benefit of the rector [vicar] of the parish [district] of ——, & for the use of the members of the Church of England in the cure of the sd parish [district] in mner hinafter appearg: NOW THIS INDRE WITNETH that the grantor (*conson, rect*, Vol. I., p. 383), **as benefl owner,** doth hby grt unto the trees, *pcels*, Vol. I., p. 385). TO HOLD unto & to the use of the trees, their hrs & assns, UPON TRUST to permit the same & all or any bldgs or bldg wch now are or may hrafter be erected on the sd premes or any pt thof to be used by the rector [vicar] for the time being of the parish [district] of —— afsd, hinafter refd to as "the rector" [vicar] or his nominees or licensees as the case may be for all or any of the pposes followg, that is to say:

(*a*) See an opinion of Sir R. Webster and others as to deeds of this nature, published by the Church Building Society, 7, Dean's Yard, S.W. This deed must be attested as regards the grantor's execution by two witnesses, and must be enrolled within six months, as it is in all respects subject to the Mortmain and Charitable Uses Act, 1888.

The draft should be submitted for approval to all societies to which application for a grant of money is made.

(*b*) As to the importance of showing that the charity is ecclesiastical where it is intended to provide against interference by the parish council, see the Local Government Act (56 & 57 Vict. c. 73), ss. 14, 75. *Re Perry Almshouses*, (1899) 1 Ch. 21. In the trust of a building of a strictly non-sectarian charity the following provisions were inserted: "The bldg shl not be used for the pposes of any parlar church, religious body or political pty, but not so as to prevent the committee from letting rooms thrin for meetgs of committees connected with any parlar church, body or pty provd that they offer to let rooms on the like terms for meetgs of committees of all other churches, bodies or pties requirg the same." "The institute shl be managed by a committee of 12 psons, 4 of whom shl be nominated by the district council of ——, 4 by the School Board ——, and 4 by *a local charity.*"

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1. For the celebron of divine service in accordce with the rites & ceremonies of the Church of England as by law established.

2. As a school or schools for the educon of chln & adults or chln only of the labourg, manufacturg & other poorer classes in the sd parish [district], accordg to the pples of the Church of England.

3. As a residce or residces for a teacher or teachers of the sd school or schools.

4. As a class-room, meetg-room or lecture-room for members of the Church of England (*c*) for confirmn or communicants' classes, or for other religious instrn, or for secular instrn of members of the Church of England.

5. As a place of meetg for clerical meetgs for social conferences of the clergy, for district visitors, for committees of any socs, parochial or orwise, connected with the Church of England, & for meetgs to be called in aid or for the benefit of any such socs.

6. As a place of meetg for a club or clubs of the labourg, manufacturg & other poorer classes of the Church of England in the sd parish [district].

7. As a lendg library for members of the Church of England.

8. For any other meetgs, or for any other objects, ends or pposes havg in view the spiritual, intellectual, moral or social wants of members of the Church of England in the parish wch the rector [vicar] may think desirable, but so that the consent of the bishop of —— for the time being (hinafter called the Bishop) be obtained thto if a number not less than half of the total number of trees for the time being shd require such consent to be obtained.

AND IT IS HBY DECLD that the sd premes & any such bldgs or bldg as afsd shl be in all respts under the sole managemt & control of the rector [vicar] subjt always to the visitg power hinafter given to the Bishop, AND that such rector [vicar] shl from time to time direct for what ppose or pposes, & in what mner, the same shl be used within the limits hinbfe laid down:

(*c*) As to who is a member of Church of England, see *Re Perry Almshouses*, (1899) 1 Ch. 21.

PREC. III. AND that any school or schools wch may be held on the sd premes, & the educon & instron to be given thrin, shl be under the sole managemt & control of the rector [vicar], who shl select, appt, & at his pleasure dismiss the teacher or teachers of the sd school or schools [with this reservon, namely, that no pson shl be appted to be a teacher who is not a *bonâ fide* member of the Church of England].

AND IT IS HBY AGRD & DECLD that it shl be lful for the trees, their hrs & assns, if they shl think it desirable, to alienate & sell or exchange the sd hds & premes hinbfe granted & conveyed, or any pt thof, & to rece any moy for equality of exchange & to apply the moy arisg from such sale or given on such exchange in the pchase of other premes or in the improvemt of any premes used or to be used for the pposes of this trust: PROVD ALWAYS that no such alienon shl be made witht the consent in writg of the Bishop (*a*) AND IT IS HBY AGRD that if any tree of these psnts shl reside out of the parish [district] for more than 12 consecutive months, or if in the opinion of the Bishop, rector [vicar] & the majority of the trees to be signified by writg signed by them he shl openly cease to be a member of the Church of England, he shl cease to be a tree: AND IT IS HBY AGRD that the power of appointg a new tree or trees of these psnts shl be exerciseable by the rector [vicar]: PROVD that no person shl be capable of being apptd a tree of these psnts unless he be a member of the Church of England: PROVD ALWAYS & it is hby decld that the Bishop shl have the powers of a visitor over the trust premes & over the managemt & control thof, & the rector [vicar], shl in all things whatsr pertaing to the sd trust, observe & carry out all dirons or orders from time to time made or to be made by the Bishop: AND IT IS HBY AGRD that durg the absence, disability or suspension from duty of the rector [vicar] or the avoidce of the benefice all the powers & authorities hby vested in the rector [vicar], except the power of apptg a new tree of these psnts, may be exercised by, & that the power of apptg a new tree or trees of these psnts may be exercised with the consent in writing of the Bishop by the officiatg minister, or if there shl be more than one such minister, by

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(*a*) As to the other consent or order required, see Vol. I., p. 578, note.

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the principal officiatg minister, of the Church of ——, within the sd parish [district]: PROVD LASTLY, that if it shd be hrafter desired to use the premes or any pt thof for the pposes of a duly consecrated church, it shl be lful for the trees hrof with consent of the Bishop by deed executed by them to revoke & make void as to all or any pt of the sd premes the trusts hinbfe contd & to convey the sd premes or any pt thof to any pson or psons or corporation duly authorised to rece the same to be held for any of pposes of the Church Bldg Acts. IN WITS, &c.

IV.

PREC. IV.

SETTLEMENT *by way of* RENEWABLE *Trust, of* FREEHOLDS *and* LEASEHOLDS (*by trust for sale*) *and* STOCKS *and* MONEY, *intended to be devoted to* RELIGIOUS *or* CHARITABLE *purposes, but to remain* PRIVATE PROPERTY (*b*).

Recitals.

PARTIES, A. & B. (hinafter called the settlors), 1; L., M., N., & O. (hinafter called the trees), 2. WHAS by an indre bearg

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Scheme embodied in Precedent.

(*b*) The editors venture to call attention to the remarkable skill exhibited in this Precedent, the work of the late Mr. Key. The scheme of this Precedent has for its object, as will be seen, the avoidance of the creation of any trust of a charitable or public nature; so as to exclude the application of the Charitable Trusts Acts, or (as to land) the Mortmain Acts, and any other existing or future legislation or jurisdiction affecting religious or charitable endowments; but at the same time to practically ensure that the property shall be devoted to the objects of the particular community or association by permission of the persons beneficially interested under the trusts. The user of the property for the contemplated purposes, being merely permissive, could not of course give rise to any legal right by prescription or otherwise. The scheme seems calculated to work satisfactorily, and to be capable of extensive application.

Renewable trust.

The object in view is attained by vesting an overriding power of appointment in a sufficiently numerous body of persons composed of members or friends of the community. The trust being a private one, and not charitable, must be kept within the limits of lives in being and 21 years required by the rule against perpetuities, and will require renewal from time to time. The overriding power, as it cannot last beyond the lifetime of the longest liver of the donees, is necessarily free from objection in this respect. The trust in default of appointment might also be extended to the lifetime of the longest liver of the donees of the power; but it is thought better to limit it to a fixed term of 21 years, if the donees or any of them should so long live. The trust will be

Conveyance of even date of freeholds and leaseholds in trust for sale.

even date with & made betn the same pties as & exted immedly bfe the exon of these psnts, the freehd hds specified in the first pt of the first schdle hrunder written have been conveyed by the settlors unto & to the use of the trees in fee simple, & the leasehd hds specified in the second pt of the same schdle have been assned by the settlors unto the trees for the residue of the term of yrs grted by the indre of lease thrin specified, upon trust for sale in mner thrin mentd, & to stand possed of the clear surplus of the moys to arise from the sale thof (after paymt of expses) & of the sd hds & of the net rents & profits to arise from or in respt of the same until the sale thof, upon such trusts & for such pposes & subjt to such powers, provons,

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renewed as often as may be thought desirable by the execution under the power of appointment of a precisely similar declaration of trust *mutatis mutandis*, so that the ultimate trust will never take effect in possession.

Overriding power.

The overriding power is vested in the donees or the survivors, or a majority of them, so as to prevent difficulty should any of them secede or dissent; and it should be vested in named persons, and not in the members for the time being of the community, as there might be a doubt as to what constitutes membership; and it is also better to avoid giving the members an interest as such.

Trusts in default of appointment.

The objects of the trusts in default of appointment are the donees of the power; but a subsidiary discretionary trust and power of appointment is vested in the trustees of the deed, which enables them to exclude any of such objects from participation. This prevents the possibility of the overriding power of appointment being affected by any dealing by any of the donees with the interests taken by them in default of appointment, under the doctrine as to the suspension of powers by such dealings, which applies, although the power is vested in several persons (*Hole* v. *Escott*, 4 M. & C. 187); the vesting of the overriding power in a majority would probably prevent this difficulty from arising; but the subsidiary power makes it doubly sure; and it enables any seceding or obnoxious member to be excluded without recourse being had to the overriding power.

As to trustees.

Having regard to the powers vested in the trustees, they should not be among the donees of the overriding power, or the objects of the trust in default of appointment. The power of appointing new trustees is left to the operation of the statute (the T. A., 1893, s. 10), so as to be in the surviving or continuing trustees; but, if need be, new trustees could be appointed under the overriding power; and recourse should be had to this for removing a trustee who is objected to.

Stamp.

The declaration of trust will require an *ad valorem* settlement stamp on the value of the stocks, &c., settled.

It is by no means clear whether the general powers contained in this deed may not render the settled property liable to estate duty on the death of any of the persons named in the 3rd schedule, see the F. A., 1894, s. 22 (2) (*a*) (*b*).

Conveyance in trust for sale.

In the case of land, there will be a conveyance in trust for sale of even date (as recited), with the necessary powers of leasing, &c., similar to the form used in settlements (see p. 543, and notes). This deed will remain standing without any renewal.

declons, & agrmts, as shd be exprd & decld concerng the same in & by an indre thrin refd to as intdd to bear even date with & to be made betn the same pties as & to be exted immedly after the exon of the now recitg indre, meang these psnts, AND the now recitg indre contains certn powers to the trees for exchangg the sd hds for other hds to be conveyed or assned to the trees upon the like trusts, & powers of leasg & mtgg the same until the sale thof, with a declon that moys reced by way of fine on the grtg of leases or for equality of exchange or wch shd be raised on mtge & wch shd not be wanted for the pposes in the now recitg indre mentd, shd be held by the trees upon the same or the like trusts as if the same had arisen from sales as thrin mentd, AND WHAS the sd pties hto are desirous of declarg such trusts of the clear surplus of the moys to arise from the sale of the sd hds & premes so conveyed & assned to the trees, or wch may be taken in exchange as afsd, & of the moys reced by way of fine on leases, or for equality on exchanges, or raised on mtge under the powers of the hinbfe recited indre, & of the income thof, & of the sd hds & premes & of the rents & profits thof until sale, as are hinafter exprd & contd; AND WHAS the settlors are absolutely & beneflly entled to the sevl stks, funds, shares, & secs, & sum of cash mentd in the second schdle hrunder written & wch are resply standg in the names or name or under the legal control of the settlors jtly or of one of them septely, & they are desirous of vestg such respive stks, funds, shares, secs, & cash in the trees upon the trusts hinafter decld concerng the same; AND WHAS a community or associon called "the ——" was some time since established & is now existg at —— for carryg on works of religion & charity, & the freehd & leasehd hds conveyed & assned by the hinbfe recited indre, have for some time past been & are at psnt being by permission of the benefl owners thof occupied, used, & employed, & the income of the sd stks, funds, shares, & secs has been & is being also used & employed permissively as afsd for the pposes of the sd community or some of such pposes; AND WHAS it is contemplated that the sd hds, stks, funds, shares, secs, & cash may hrafter by permission of the psons for the time being beneflly entled thto under the trusts hinafter decld be occupied, used, or employed for the pposes of the sd community or some of such pposes, but it is the

Desire to settle freeholds and leaseholds.

Title to stocks, &c.

As to religious community.

As to permissive use of premises.

PREC. IV.

express object & intention of the pties hto in declarg the trusts hinafter contd that all the sd ppty & premes shl be & remain strictly private ppty, & so as to be wholly unfettered by & free from any trust whatever in favour of the sd community or any of the pposes thof, or any trust of a religious, charitable, or public nature, & to the intent that the occupon, use, & employmt of the same for the pposes of the sd community if & for so long as such occupon, use, or employmt may continue, shl remain & be entirely permissive & shl not create or give rise to any rt whatever on the pt of the sd community in respt thof: AND WHAS the sd respive stks, funds, shares, secs, & cash are intd to be forthwith transferred & pd or made over to the sd trees; AND WHAS further stks, funds, shares, secs, or moys may possibly hrafter be transferred or pd or made over by or by the diron of the settlors or one of them to the trees or tree for the time being of these psnts to be held upon the trusts hrof. NOW THIS INDRE WITNETH & it is hby agrd & decld that the said trees & the survors & survor of them & other the trees or tree for the time being of these psnts (all of whom are intd to be hinafter included under the designon of "the sd trees") shl stand possed of & intted in the clear surplus of the moys to arise from the sale of the sd freehd & leasehd hds & premes so conveyed & assned to them by the hinbfe recited indre of even date hwith as afsd, or wch may at any time or times be taken in exchange under the afsd power of exchange, & also of the moys to be reced by the sd trees by way of fine on leases or for equality on exchanges, or wch may be raised on mtge under the powers of the sd indre of even date hwith & may not be wanted for the pposes thof as afsd (after paymt of expses), & of the income of all such moys as afsd, & also of the sd stks, funds, shares, secs, & cash mentd in the second schdle hto when the same shl have been transferred & pd or made over to the sd trees as afsd, & of the income thof resply, & also of the sd freehd & leasehd hds & premes conveyed & assned by the sd indre of even date hwith or wch may be taken in exchange as afsd & the net rents & profits (hinafter called the income) thof until sale thof Upon the trusts follg, that is to say UPON TRUST for such pson or psons, for such pposes & in such manner & with, under, & subjt to such powers, provos, & declons in all respts as the sevl

Intention to transfer stocks.

As to further settlement.

Witnesseth.

Declaration of trust.

As persons named in third schedule or surpsons named & descd in the third schdle hto or the survors or survor of such psons or a majority of such psons or of such survors shl from time to time or at any time hrafter by deed, revocable or irrevocable appt or direct, AND in default of & subjt to any such apptmt or diron & so far as no such apptmt or diron shl extend, Upon trust durg the term of 21 yrs from the date of these psnts, in case the sd psons named & descd in the third schdle hto or any of them shl so long live, to pay or apply the income of all & singr the sd trust premes (includg in such income the sd sum of cash) to or for or to permit the same to be recd, used, or enjoyed by or for, & to permit such of the sd hds as shl for the time being be unsold, to be occupied, used, or enjoyed by or for, the psonal & individual mtce, residce, board, lodgg, support, or benefit of all or such one or more exclusively of the others or other of the psons named & descd in the sd third schdle hto, or of the survors for the time being of them as the said trees shl in their abolute & uncontrolled & uncontrollable discron from time to time by writg under their hands direct or appt or, witht any such diron or apptmt in writg, shl think fit to permit to become objects of this psnt trust & in such mner in all respts as shl be so directed, apptd, or permitted, & so that in the absence of any such diron or apptmt in writg as afsd or any written expression of intention by the sd trees to the contrary & subjt to such diron, apptmt, or expression of intention (if any), the rt to the benefl rect, enjoymt, occupon, or use of such income, hds, & premes, shl durg the term afsd be considered to be vested from time to time in all the sd psons named & descd in the third schdle hto or such of them as shl for the time being be livg in eql shares; PROVD ALWAYS & it is further decld (but subjt always to the overridg power of apptmt hinbfe contd as afsd) that the whole or any pt of the capl of the sd trust ppty & premes may at any time durg the continuce of the sd term of 21 yrs be pd, transferred, or applied by the trees or by their written diron or authority, or by their permission & witht any such diron or authority in writg (if the case so permits) unto or for the psonal & individual benefit or use of all or any one or more of the sd psons named & descd in the third schdle hto or of the survors for the time being of

vivors or a majority shall appoint.

In default discretionary trust for 21 years of income for such persons.

The like as to capital.

them, as the sd trees in their absolute discron may think fit, in like mner as the income thof is hinbfe directed or authorised to be pd or applied, & so that the sd trees shl be free from all responsibility in respt of such paymt, transfer, or applicon;

As to permissive use by community.

PROVD ALSO & it is hby exply decld that in case the income or capl of the sd trust ppty & premes or the sd unsold hds or any pt thof resply shl at any time or times by permission (whether express or implied) of the psons for the time being beneflly entled to the rect, enjoymt, occupon, or use thof under the trusts hinbfe decld, or witht objon in writg made to the sd trees by such psons or any of them, be reced, used, applied, employed, occupied, or enjoyed for the pposes of the sd community or any of such pposes or in any other mner not in accordce with the trusts hinbfe decld, the trees shl not, unless & until they shl rece such objon in writg as afsd, be under any liability or responsibility whatsr in respt of such rect, use, applicon, employmt, occupon, or enjoymt;

Trust at end of 21 years for survivors of same persons as trustees appoint.

AND IT IS HBY further decld that from & after the expiron or sooner determinon of the sd term of 21 yrs (& in default of & subject to any apptmt under the overridg power of apptmt hinbfe contd as afsd) the sd trees shl stand & be possed of & inttd in the capl & income of all the sd trust ppty & premes or so much thof resply as shl not have been applied or disposed of under the trusts or powers hinbfe contd & of the sd unsold hds, upon the trusts follg, that is to say if the sd term shl expire by the efflux of time, Upon trust for all or such one or more exclusively of the others or other of such of the sd psons named & descd in the third schdle hto as shl be livg at the expiron of the sd term of 21 yrs as the sd trees shl bfe such expiron by any deed or deeds with or witht power of revocon & new apptmt appt;

In default equally.

AND in default & subjt to any such apptmt Upon trust for such of the sevl psons named & descd in the third schdle hto as shl be livg at the expiron of the afsd term, & if more than one in eql shares as tenants in common as psonal este: BUT if the sd term shl determine before the expiron of the sd period of 21 years, then upon such trusts as the sd trees shl before the expiron of such period appt & in default of & subjt to any such apptmt upon trust for the psons named in the third schdle hrto in eql shares as tenants in common as psonal este.

Powers of management, &c.

PROVD ALWAYS

& it is hby agrd & decld that it shl be lful for the sd trees to manage or superintend the managemt of the sd unsold hds & premes in all respts & to erect, pull down, rebuild, add to, enlarge, alter, & repair, houses & other bldgs & erons, & to drain & orwise improve the same, & to exte such other works thron as may be deemed expedient, with all the powers in that behalf of absolute owners, & also from time to time or at any time to delegate all or any of such powers of managemt & other powers last afsd to or permit the same to be exercised by any other pson or psons (whether beneflly inttd under the trusts hinbfe contd or not), witht incurrg any responsibility for the acts or defaults of any such pson or psons or any loss or damage thby occasd, AND to pay the expses incurred in the exercise of the powers of managemt & other powers lastly hinbfe contd or permit the same to be pd out of the income or capl of the sd trust premes as may be thought fit; PROVD ALSO & it is hby further decld that any moys whether constitug or representg capl or income wch may at any time be in the hands of the sd trees subjt to the trusts of these psnts may at the absolute discron of the sd trees be invested in the names or under the jt legal control of the sd trees, or not less than three of them, in or upon any of the investmts or applied & disposed of in any of the modes next hinafter mentd & not orwise, & any such investmts may at the like discron be varied or transposed into or for others of any nature hinafter authorised, that is to say, in or upon investmts, *see* SETTLEMENTS, pp. 459 *et seq.*; or in paymt of any calls wch may be made upon any shares for the time being held upon the trusts of these psnts, or in the pchase of any freehd, copyhd, or leasehd hds in England or Wales, such leasehd hds to have terms of not less than —— yrs unexpired at the time of pchase, or in paymt of any fine payable on takg or renewg any lease of any hds for the pposes of the trusts of the sd indre of even date hwith or these psnts, or of any moy payable for equality on any exchange of any hds for the time being subjt to the trusts of the sd indre of even date hwith or of these psnts, or for the enfranchisemt of any copyhd hds for the time being subjt to the sd trusts, or in the dischge, pchase, or redmon of any mtge, anny, or other incumbce, or of land tax, tithe rent-chge, or any chief rent, quit rent, or

Powers of invest-ment, &c., and vary-ing,

including the pur-chase of land.

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rent-chge on or affectg any hds for the time being held upon the trusts of the sd indre of even date hwith or of these psnts, or in paymt of the expses of pullg down, rebldg, addg to, enlargg, repairg, alterg, or improvg any houses, bldgs, or erons standg or being on any lands for the time being held upon the trusts of the sd indre of even date hwith or of these psnts, or of erectg or bldg any new bldgs or erons thron, or of draing or improvg any such lands, houses, bldgs, or erons, AND it is hby agrd & decld that any stks, funds, shares, or secs in or upon wch any such moys as afsd shl be invested as afsd & the income thof shl be held & applied upon the like trusts as the moys so invested & the income thof wd have been held or applicable if the same had not been so invested & any hds pchased or taken in exchange or on lease or orwise acquired under the trusts & powers afsd shl be conveyed to or vested in the sd trees accdg to law, to be held upon the same or the like trusts as are decld by the sd indre of even date hwith or of these psnts concerng the hds conveyed or assnd by the sd indre of even date hwith, AND the sd trees may accept such title to any hds pchasd or orwise acquired or taken in exchange or on mtge or orwise as hinbfe or by the sd indre of even date hwith provd, as shl be deemed pper although not strictly marketable; PROVD that nothg hrin contd shl authorise investmts in secs passg to the bearer by mere delivery; PROVD ALWAYS & it is hby decld that any moys, whether constitutg or representg income or capl, wch may from time to time be in the hands of the sd trees subjt to the trusts of the sd indre of even date hwith or of these psnts, may at any time be pd by the sd trees into the —— Bank or into any other bank to an acct to be kept in the names of the sd trees; PROVD FURTHER & it is hby exply decld that any moys constitutg or representg income subjt to the trusts of the sd indre of even date hwith or of these psnts, & also any moys constitutg or representg capl so subjt wch shl have been appropriated (whether exply or by implicon) by the sd trees so as to be applicable as income for the ppose of such trusts, may in the absence of any diron to the contrary by or on the pt of the psons or pson beneflly entled to or inttd in such moys under the trusts hinbfe decld or any of such psons & witht the necessity for any express authority from such psons

Power to trustees to open banking account in their own names.

Or in the names of other parties.

or pson, be pd by the sd trees into the ——. Bank or into any other bank, to an acct to be kept in the name or names of such one or more of the psons named in the sd third schdle hto as the sd trees shl from time to time in their absolute discron think fit, & every such paymt shl be deemed valid & effectual as a paymt to or on acct of the psons or pson for the time being benefily entled to such moys under the trusts afsd, & the entry thof in the pass-book relatg to the acct to wch such moys shl be so pd shl be an absolute dischge & acquittce for the moys so pd to the sd trees who shl not be in any mner concerned to see or enquire as to the applicon thof or be in any mner liable for the loss or misapplicon thof; PROVD ALWAYS & it is hby decld that the sd trees shl have the fullest & most ample powers of determing all questions & mres of doubt arisg in the exon of the trusts of the sd indre of even date hwith & these psnts, AND also to settle accts & to compromise, compound, refer to arbitron, rele, abandon, submit to, & arrange any claims, demands, actions, pcdgs, disputes, & things relatg to the sd trust premes & to exte & enter into all such deeds, agrmts, & instrumts, & do all such other acts & things as may be deemed pper for any of such pposes witht being responsible for loss or for any exercise of any such discronary powers & so as conclusively & effectually to bind all psons inttd hrunder, *Power to employ agents*, p. 521; AND IT IS HBY further agrd & decld that in case at any time or times hrafter any further stks, funds, shares, secs, or moys shl be transferred or pd by or by the diron of the settlors or eir of them to the trees, & such transfer or paymt shl be evidenced or recorded by a mem or other documt endorsed on these psnts or orwise & signed by such settlors or settlor, then & in such case & in the absence of or subjt to any express declon of trust or intention of the settlors or such one of them to the contrary, the stks, funds, shares, secs, or moys so transferred or pd shl be held by the trees upon the like trusts & subjt to the like powers & provons (so far as subsistg) as are hinbfe decld & contd concerng the stks, funds, shares, secs, & moys comprd in the second schdle hto; PROVD ALWAYS & it is hby decld that all the powers & discrons

Power to settle questions, compromise, &c.

Proviso as to settlement of further stocks, &c.

Provision as to sole trustee (*a*).

(*a*) If the community is for religious purposes it may be convenient to

PREC. IV. hby given to or vested in the trees shl be exercisable by a sole tree for the time being. IN WITS, &c.

[*First Schdle—Freehds & leasehds.*]

[*Second Schdle—Stks, &c.*]

[*Third Schdle—Names & descriptions of donees of overridg power.*]

V.

PREC. V.

A DIOCESAN TRUST DEED (*a*).

KNOW ALL MEN by these psnts that we, ——, —— & ——, do hby constitute ourselves trees to be known as the "—— diocesan trees" for the pposes & with the powers hinafter mentd, & do hby declare that

1.—These psnts may be referred to in any doc as the "—— diocesan trust deed, 18—."

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provide that if any of the persons mentioned in the 3rd schedule or a trustee changes his religion, his rights under the deed shall cease as if he were dead, see pp. 268 and 288.

(*a*) The object of this deed is to enable gifts for church purposes to be made to trustees, called "diocesan trustees," who are as far as possible freed from responsibility, while powers of management are vested in other bodies of trustees called "administrative trustees." Although the Precedent will be but rarely used, many of the provisions may be found convenient in charitable trust deeds.

Disestablishment. Where it was considered necessary to provide expressly against disestablishment, the following provisions were inserted: "The 'Bishop' shl mean the Bishop of —— & his succors, & if at any time the Bishop shl cease to be a corporon sole, the pson who shl for the time being dischge the spiritual functions now exercised by the Bishop of ——. 'The Diocese' shl mean the district over wch the Bishop shl for the time being exercise spiritual jurisdon. 'The Church of England' shl mean the clergy & laity of the Episcopal Church for the time being in communion with & submitg to the spiritual jurisdon of the Bishop, & havg the same spiritual organizon, ministron, doctrine, & discipline as at the psnt time, or as near thereto as the laws & canons for the time being in force shl admit."

2.—In these psnts & in the regulons hinafter mentd & in any doc expd to be supplemental or referrg hto unless the contrary appears.

Definitions.

(i) "The bishop" shl mean the Bishop of —— for the time being

(ii) "The diocese" shl mean the psnt Diocese of ——.

(iii) "The trees" shl mean the pties to these psnts & the survors or survor of them, or other the trees or tree for the time being of these psnts.

(iv) "The regulons" shl mean the regulons made by the trees in mner hinafter provd.

3.—The trees may acquire real & psonal ppty of any nature, & may apply the same & the income thof for, or towards, all or any of the pposes hinafter mentd for the benefit of members of the Church of England within the diocese, that is to say:—

Objects of trust.

(i) Making donons or subscriptions to any socy, institon, trust, organizon, or charity now existg or hrafter to exist.

(ii) In acquirg sites for, & bldg, restorg, alterg, enlargg, maintaing, & endowg churches, chapels, whether intd to be consecrated or not, churchyards, burial grounds, hospitals, colleges, schools, school houses, houses of residence for any ppose, mission halls, parish rooms, clubs, institutes, & other bldgs.

(iii) Providg, maintaing, extendg, & testg by examinon or orwise educon & religious instruction.

(iv) Providg, increasg, or contributg towards the stipends of & the relief of ministers, curates, teachers, organists, choristers, & other officers & assistants, whether clerical or lay, of the Church of England, & of their widows & families.

(v) Genlly in the uncontrolled discron of the trees providg for the mtce & furtherce of the intts of the Church of England within or in connon with the diocese.

(vi) Doing all such things as may to them in their uncontrolled discron appear to be incidental or conducive to the pposes afsd or any of them.

Provd that any applicon for any of the pposes afsd shl be valid, though the benefits thof may incidentally extend to members of the Church of England outside the diocese, or to psons who are not members of the Church of England.

PREC. V.

Property held for general purposes.

4.—(i) Where ppty is vested in the trees for the genl pposes of the trust, or where no trusts are decld thof, the trees shl in their uncontrolled discron apply such ppty & the income thof for, or towards all or any of the pposes mentd in the third clause of these psnts. Such ppty is hinafter refd to as "ppty held for the genl pposes of the trust."

Property held for special purposes.

(ii) Where ppty is vested in the trees, & any special trusts are decld thof by the instrumt creatg the trust, the trees shl apply such ppty & the income thof in accordce with such special trusts, & subjt to such trusts if there shl be a surplus of such ppty or of the income thof after satisfyg the pposes of the trusts so decld the trees shl in their uncontrolled discron apply such surplus for or towards all or any of the pposes mentd in the third clause of these psnts. Such ppty is hinafter refd to as "ppty held on special trusts."

(iii) The provons of these psnts (subject to such modificons thof, if any, as may be decld by the instrumt creatg the trust) shl apply to ppty held for the genl pposes of the trust & to ppty held on special trusts & the income thof resply.

Power to transfer property to a stranger.

5.—It shl be lful for the trees to pay or transfer any ppty held by them for the genl pposes of the trust to any pson or psons, or to a corporon, who shl undertake to apply the same for or towards such of the pposes mentd in the third clause of these psnts as may be determined by the trees, witht the trees being responsible or liable for any loss or misapplicon thof.

Proviso as to purposes which are not charitable.

6.—Ppty held for the genl pposes of the trust shl not be applied for any of the pposes mentd in the third clause of these psnts wch are not charitable after the expiron of 20 yrs after the death of the survor of the issue of Her Majesty the Queen who shl be livg at the time when such ppty (or if a change of investmt shl have taken place at the time when the ppty wch such investmts then represent) was acquired by the trees.

7.—When ppty is held on special trusts wch are not charitable then on the expiron of 20 yrs from the death of the survor of the issue of Her Majesty the Queen, who shl be livg at the date of the foundation of such special trusts, the trees shl hold such ppty dischgd from the special trusts for such of the pposes mentd in the third clause of these psnts as shl be charitable.

As to accepting property.

8.—The trees shl have power to accept or decline any ppty or any trust.

9.—(i) The trees shl not accept any trust wch shl entail on them any psonal liability to make any paymts (except rates or taxes) to any pson or psons other than the objects of the trust, or to improve, maintain, or repair any ppty, or to insure any ppty against loss or damage by fire.

(ii) It shl be lful but not incumbent for the trees to pay or dischge any rent or other outgoings, charges, or paymts in respt of any ppty held by them eir for the genl pposes of the trust or on special trusts, & to improve, maintain, or repair any such ppty, & to insure the same agst loss or damage by fire, & to defray the costs & expses (includg surveyor's or agent's fees) incurred by them in so doing out of the income or capl of that ppty, or if such income or capl shl prove insufft, then out of the income or capl of any ppty held for the genl pposes of the trust, or in the case of ppty held on special trusts at the discron of the trees wholly or partially out of the income or capl of ppty held for the genl pposes of the trust.

(iii) Where the trees consider it desirable to pchase or accept trusts of leasehds (*a*) or any other ppty

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Leases for charitable purposes.

(*a*) The Mortmain Act, 1888, s. 4, renders a lease for charitable purposes, except those mentioned in the third part of the Act, void if it contains a reservation of a rent, other than a nominal rent, or any provision except as mentioned in s. 4, in favour of the grantor. But the Act does not prohibit a lease containing no reservation of rent and no other provision in favour of the grantor; nor does it prohibit the assignment of a lease subject to rent and covenants, but the usual covenant of indemnity by the assignee would render the assignment void under s. 4.

There appears to be no objection to granting a lease at a rent and containing provisions in favour of the grantee for any of the purposes mentioned in the third part of the Act.

It should perhaps be noticed that the diocesan trustees are not "a society or a body of persons" within s. 7, sub-s. ii. If this were the case, it would be possible to evade the provisions of the second part of the Act by merely forming a committee for the purpose of carrying out any charitable purpose, imposg a psonal liability on the legal owner thof for the time being to pay rent or outgoings, or to pform any covt, they may cause the legal este in such ppty to be vested in any pson or psons willg to accept the same upon such terms of indemnity as may be agrd upon out of the income or capl of that ppty, or out of the income or capl of ppty held for the genl pposes of the trust, or partly in one way & partly in anor, & subjt to such indemnity upon trust to sell the same when so required by the trees & to pay the moys arisg from such sale to the trees, or as they shl direct & upon trust until sale to pay the income of such ppty, or of the unsold pt thof to the trees or as they shl direct, & to deal with such ppty or the unsold pt thof in all respts as the trees shl direct.

(iv) The trees shl have power to chge the ppty vested or agrd to be vested in any pson or psons under the precedg sub-clause, or the income thof, or the income or capl of the ppty held for the genl pposes of the trust, or any pt thof, in such mner as they may think pper for givg effect to the indemnity mentd in the precedg sub-clause.

Power of trustees.

10.—Where ppty is vested in the trees they may at their discron

(i) Apply the whole or any pt thof, whether capl or income,

(*a*) In or towards paymt of the expses of the trust, provd that the genl expses of the trust shl not be pd out of ppty held on special trusts.

(*b*) For or towards all or any of the pposes mentd in the third clause of these psnts.

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and taking a conveyance to trustees for them. Probably the "body of persons" means not persons who are to manage, but persons who are to benefit by, the charity.

A grant of a lease at a rent for the site of a church, &c., cannot be made under 36 & 37 Vict. c. 50, as such a lease is not "a gift, sale, or exchange, in fee simple," but there appears to be no objection to making an assignment for that purpose, either by way of gift or sale of such a lease.

(ii) Raise moy by mtgg the same or any pt thof, but so that no mtgee shl be concerned to enquire into the necessity or propriety of raisg moy or as to the amt required.

(iii) Sell the same or any pt thof & concur in makg partition or exchange thof or of any pt thof with power to give or rece moy for eqlity of exchange or partition & to exte any convces for the pposes afsd.

(iv) Exercise over the same all the powers of leasg & of acceptg surrenders of leases conferred on a tenant for life by the S. L. Acts, 1882 to 1890, or any Acts for the time being in force amendg or re-enactg the same.

(v) Invest any moy in their hands in any mner in wch accdg to the law for the time being in force trust moys may be invested, or in the pchase of freehd, copyhd, or leasehd hds, with power from time to time to vary such investmts.

(vi) Make investmts in the names of four only of the tree wherever the rules applicable to such investmts prohibit them being made in the names of more than four psons.

(vii) Accumulate any unemployed income in the way of compound intt by investg the same & the resultg income thof, but so that such accumulons may at any time be applied for any of the pposes mentd in this clause applicable thto.

Provd always that any moys or investmts arisg or made under the powers contd in this clause, & the income thof shl be held upon the trusts on wch the ppty represented by such moys or investmts & the income thof resply wd have been subjt to if such ppty had been retained by the trees.

Power to delegate powers of management.

11.—(i) The trees may from time to time, & eir exply or by implicon, delegate such powers of managemt as they may think fit over any specified ppty to managers hinafter called "administrative trees," to be apptd by or in the mner directed by the instrumt creatg the trust, or if no such apptmt or diron shl be made to be apptd by the trees in such mner & for such period as the trees may think fit. Provd that the trees shl not under any circes be responsible or liable for the acts or omissions of the administrative trees.

(ii) Where the administrative trees are apptd by the trees & not merely in exercise of a power conferred on them by the instrumt creatg the trust, the trees may at any time in their uncontrolled discron eir wholly or partially revoke any powers delegated to the administrative trees, or remove all or any of the administrative trees from office.

(iii) Where the administrative trees are apptd by or in the mner directed by the instrumt creatg the trust, & they shl neglect or fail to exercise the powers or to make any of the paymts or to pform any of the acts mentd in the clause next followg to the satisfon of the trees, it shl be lful but not incumbent for the trees wholly or partially to revoke any powers delegated to them, or by deed executed by the majority of the trees to remove all or any of the administrative trees from office & to appt new administrative trees or a new administrative tree in their, his, or her place.

Powers of administrative trustees.

12.—Where powers of managemt over any ppty are delegated to administrative trees they shl

(i) Exercise such powers in accdce with such dirons, if any, as may from time to time be given to them by the trees.

(ii) Pay & dischge all rents, rates, taxes, & other outgoings, chges, or paymts in respt thof, maintain such ppty in good & substantial repair to the satisfon of the trees & insure & keep insured the same in the names of & in an office to be approved of by the trees agst loss or damage by fire & defray the costs & expses thof, & the costs & expses (includg surveyor's or agent's fees) incurred by the trees in ascertaing that the provons of this clause are pformed by the administrative trees, out of the income comg to their hands of the trust ppty, or out of voluntary contribons received by them.

(iii) Render such accts as may be required by the trees, & produce pper vouchers for the same.

Incumbent trustee.

13.—Where the rector or vicar of a parish or the vicar of a district is as such an administrative tree.

(i) If he shl be suspended from duty, or if his benefice shl be sequestrated, he shl cease to be an administrative tree & the trees may appt a new administrative tree in his place, who shl have the same powers as such rector or vicar wd have had if he had continued to be an administrative tree.

(ii) The ppal officiatg minister of such parish or district may act as administrative tree.

(*a*) Durg the absence or disability of such rector or vicar.

(*b*) During a vacancy in the livg.

(*c*) In the interval after such rector or vicar shl cease to be an administrative tree by resignon of that office or under sub-clause (i) of this clause & before a new administrative tree shl be apptd in his place.

Forfeiture by *cestui que trust* tenant for life.

14.—Where the trees hold any ppty upon trusts under wch any pson is entled durg his life or any less period to the benefl enjoymt thof, or to the income thof, and

(i) If any event shl happen whby if a life intt in such ppty belonged absolutely to him such intt wd become vested in or charged in favour of any other pson or psons or a corporon;

(ii) If he being a clerk in holy orders shl be suspended from duty;

(iii) If he being a beneficed clerk his benefice shl be sequestrated; or

(iv) If he goes into posson of such ppty, & shl while he remains in posson thof at any time omit at his own expse to pay & dischge all rates, taxes, & other outgoings, chges & paymts in respt thof, or to maintain & keep such ppty in tenantable repair, or if so required by the trees to insure & keep insured the same in the names of & in an office to be approved of by the trees agst loss or damage by fire to the satisfon by the trees, or to pay the costs & expses

PREC. V.

incurred by them (includg surveyor's or agent's fees) in ascertaing that he has pformed & done the acts & things in this sub-clause mentd, or if he shl not if required by the trees give such psonal or other secy to the trees as they shl require for pformg & doing such acts & things;

Then, & in any of such cases, it shl be lful but not incumbent for the trees to declare by writg under the hands of the majority of the trees that the trusts in his favour shl cease as if he were dead, & on such declaron being made such pson shl cease to have any benefl intt under the sd trusts, & thenceforth the trees shl durg his life or durg such shorter period as shl elapse, while such pson wd in the absence of this psnt provon be entled to the benefl enjoymt of the same ppty or of the income thof, hold the income of the same ppty in trust for such of the genl pposes of the trust as may be charitable.

Alteration of diocese.

15.—In the event of the parton or alteron of the boundaries of the diocese, the trees may appropriate such pt as they shl in their uncontrolled discron think fit of the ppty held for the genl pposes of the trust to similar pposes within the area of such parton or alteron septed from the diocese, & may appt in place of the trees new trees of such appropriated ppty, & also of all or any ppty held on special trusts eir wholly or ptly, for the benefit of or in connon with any pt of the area so septed, & may by deed executed by a majority of the trees declare the trusts of such appropriated ppty provd that the trusts to be so decld shl so far as possible be identical with the trusts of these psnts.

Alteration of parish, &c.

16.—In the event of the alteron of the boundaries of any archdeaconry, rural deanery, parish, or place, the trees may by deed extd by a majority of the trees make such modificons in any trusts affected by the sd alteron as shl in their uncontrolled discron appear necessary or desirable in order to carry into effect the origl objects of such trusts.

Clerks, &c.

17.—The trees shl have power from time to time to appt or dismiss officers, clerks, or servants, & to pay them such remuneron as may be agrd upon.

Meetings of trustees.

18.—(i) The trees shl hold at least one meetg, & may hold as many meetgs as they think fit in every year.

(ii) Any question submitted to a meetg shl be decided by a majority of the votes of the trees psnt at such meetg, but the chairman shl have a second or castg vote.

(iii) Except in the case hinafter mentd five trees psnt at a meetg shl be a quorum.

(iv) The trees shl cause minutes of their pcdgs to be entered in a book to be kept for that ppose.

Power to make regulations.

19.—The trees shl have power at any meetg to make, vary, & revoke regulons for the pposes follg:—

(i) The time, place, & method of callg meetgs of the trees.
(ii) The apptmt of a chairman.
(iii) The acceptg or decling ppty or trusts.
(iv) The apptmt of committees for special pposes.
(v) The custody of moy, deeds, secys, & documts.
(vi) The apptmt & removal of administrative trees.
(vii) The audit of accts.
(viii) Genlly as to the managemt of the business of the trust.

Provd that no regulon shl override any provon of these psnts.

Arbitration.

20.—Any dispute (not being a dispute as to the meang of these psnts or of the regulons) arisg in respt of any trust betn the trees & the repve or repves of any one or more of them, or betn the trees & the administrative trees, or betn the trees & any object of the trusts, or betn the administrative trees & any object of the trusts, shl be refd to the bishop or to some pson to be nominated in writg by him as a single arbitrator under the Arbitron Act, 1889, or any statutory amendmt or re-enactmt thof, but subjt to any diron to the contrary by the arbitrator the costs of appearg by counsel or solor shl not be allowed as betn the parties.

21.—If any dispute shl arise betn the trees & the administrative trees, or betn the trees & any object of the trusts, or betn the administrative trees & any object of the trusts as to the meang of these psnts, or of the regulons, the decision of the trees given at a meetg shl be final & conclusive.

22.—The decision of the trees given at a meetg that any proposed applicon of ppty or acceptce of a trust or of a power will be in accordce with the provons of these psnts shl be final & conclusive.

Power

23.—It shl be lful for the trees by deed extd by two-thirds to vary trusts.

of the trees in psuance of a resolon passed at a meetg of the trees at wch a majority of the trees shl be psnt,

(i) To declare addonal pposes being pposes for the benefit of the members of the Church of England within the diocese in wch ppty held for the genl pposes of the trusts may be applied.

(ii) To revoke or vary any of the provons hrin contained.

(iii) To revoke any special trusts in favour of any ppose wch shl be stated in the resolon to have become obsolete or impossible to be carried into effect, & to substitute & declare other trusts in favour of one or more of the pposes mentd in the third clause of these psnts, but so that if the trusts so revoked were for the benefit of a pson or psons within a certain area, the substituted trusts shl be for the benefit of a pson or psons within the same area.

Provd that no resolon for the ppose of sub-clause (iii) of this psnt clause shl be passed by the trees if ppty comprised in the trust is managed by administrative trees apptd by or in the mner directed by the instrumt creatg the trust unless two-thirds at least of the administrative trees shl in writg reqt the trees to pass the same.

Concurrence of trustees.

24.—Trees dissentg from any lful decision of the majority of the trees shl, nevs, concur in executg & doing all such instrumts & accts as may be requisite for the ppose of givg effect to such decision.

Power to obtain incorporation.

25.—The trees may at any time obtain incorporon eir for all pposes or for the ppose of one or more trusts.

Trustee seceding.

26.—If any tree or administrative tree shl, in the opinion of two-thirds of the trees, evidenced by writg under their hands & under the hand of the bishop, openly leave the Church of England, he shl cease to be a tree or administrative tree, & shl be deemed to be unfit to act as such.

Power to appoint new trustees.

27.—(i) The power of apptg a new tree or new trees of these psnts shl be exercised by the majority of the trees with the consent in writg of the bishop.

(ii) It shl be lful for two-thirds of the trees, with the consent in writg of the bishop, to appt any pson or psons as an addonal tree or addonal trees though there may be no vacancy in the office of tree.

(iii) A tree or administrative tree may at any time resign his office.

28.—The trees may be appted trees of any existg trust wch to them in their uncontrolled discron shl appear conducive to any of the pposes mentd in the third clause of these psnts, but the provons of these psnts shl not apply to such trust unless such provons are exply applied thto.

29.—The trees may accept & exercise the power of apptg new trees of any ppty, notwg that such ppty be not vested in them, provd that the trusts on wch such ppty is held shl appear to them in their uncontrolled discron to be conducive to any of the pposes mentioned in the third clause of these psnts. IN WITS, &c.

VI.

PREC. VI.

DECLARATION *of* TRUST *of* MONEY SUBSCRIBED *for the* WIDOW *and* FAMILY *of a Man killed by an Accident* (*a*).

Recitals.

Consols purchased with subscriptions.

Declaration of trust.

As to income.

DEED OF DECLON OF TRUST made the —— day of —— BETN A., of, &c., & B., of, &c., of the one pt, & C., of, &c., of the other part: WHAS there is now standg in the names of the sd A. & B. the sum of £—— 2¾ p. c. Consold Stk, arisg from the investmt of moys raised by subscription for the benefit of the sd C., the widow of X., late a porter in the service of the —— Rly Co., who was killed by an accident while in their employ on the —— day of ——: NOW IT IS HBY AGRD & decld betn & by the sd A. & B. & the sd C. that the sd A. & B., & the survor of them, & the exs or ads of such survor shl henceforth stand possed of the sd sum of £—— 2¾ p. c. Consold Stk, & the income thof: Upon the trusts follg—namely, UPON TRUST durg the life of the sd C. & 21 years after her death (*b*)

(*a*) The presumption is that this declaration represents the wishes of the contributors, see *Att.-Gen.* v. *Clapham*, 4 De G. M. & G. 591, at p. 626.

(*b*) The discretionary trust could, if desired, be continued till the death of the last survivor of C. and her existing children.

PREC. VI. in the absolute & uncontrolled discron of the sd trees or tree from time to time to pay & apply the income of the sd trust fund, or of so much thof as shl not have been sold or disposed of as next hinafter mentd, to or for the benefit of the sd C., & her chln or child by the sd X. for the time being in existce, or any one or more of such objects of this trust to the exclusion of

Capital. the others or other of them, & UPON FURTHER TRUST durg the period afsd in the like absolute & uncontrolled discron from time to time to sell & dispose of all or any pt of the capl of the sd trust fund, & to pay or apply the moys arisg thfrom to or for the mtce, support, advcemt, or benefit of the sd C., & her sd chln or child, or any one or more exclusively of the others or other of them, as the sd trees or tree shl think pper.

Ultimate trust. AND subjt to the discronary trust hinbfe contd the sd trees or tree shl stand possed of the sd trust fund & the income thof in trust for the sd C. IN WITS, &c.

NOTICES.

I. Notice to obligor of assignment of bond debt (*a*).

To A., *obligor*, of, &c.

I hby give you notice that by a deed dated this —— day of ——, the ppal sum of £——, the paymt whof is secd to B., of, &c., by your bond, dated the —— day of ——, togr with all intt due & to become due thron, as from the —— day of —— now last, has been assned by the sd B. to C., of, &c. Dated this —— day of ——, 18—.

(Signed) D., Solor for the sd C.

II. Notice to trustees of settlement or will of assignment of a reversionary interest thereunder to a purchaser or mortgagee (*a*).

To E. & F., the trees of a settlemt, dated &c., made on the marre of L., of, &c., & M., his wife, *or*, "of the will & codls of X., late of, &c., deced," & all others whom it may concern.

We do hby give you notice that by an indre, dated, &c., & made, &c., *description from pcels, as for instce,* "All the share or intt of the sd A. of or in the trust funds & ppty comprd in or subjt to the trusts of the above-mentd settlemt, *or*, 'will,'

As to notice of assignment of chose in action.

(*a*) Notice to the debtor of the assignment of a legal or equitable chose in action is necessary, (i.) to prevent the debtor paying the assignor or some other person; (ii.) to prevent a subsequent assignee gaining priority by notice; (iii.) in the case of debts due to the assignor in his trade or business, to take them out of his order and disposition within s. 44 of the Bankruptcy Act, 1883; (iv.) in the case of a legal chose in action to perfect the assignment so as to enable the assignee to sue in his own name under s. 25 (6) of the Judicature Act, 1873, which has been held to include an assignment by way of mortgage: *Tancred* v. *Delagoa Bay, &c., Co.*, 23 Q. B. D. 239, *ante*, p. 39. See generally on this subject, the notes to *Ryall* v. *Rowles*, in 1 W. & T., L. C. Eq.; *Ward* v. *Duncombe*, [1893] A. C. 369. An assignee of a reversionary fund who gives notice to all the trustees in existence at the time of his assignment is entitled to priority over a subsequent assignee who has taken his assignment after the death or retirement of all such trustees, and given notice to the new trustees: *In re Wasdale*, [1899] 1 Ch. 163.

expectant on the dece of the survor of the sd L. & M." has been assned by the sd A. to the sd B., for his absolute benefit, *or*, "by way of secy, as thrin mentd." Dated, &c.

(Signed) C. & D., &c.

III. Notice to trustees of will of assignment of share of a residuary legatee to the trustees of his marriage settlement.

To A. & B., the trees of the will & codls of X., late of, &c., deced, & all others whom it may concern.

Be pleased to take notice that by an indre, dated, &c., & made betn, *pties, pcels from assnmt, as for instce,* "All the share or intt of the sd A. (whether under any apptmt, or in default of apptmt), of or in the trust funds or ppty representg the residuary este of the sd X." has been assned by the sd A. (subjt to the prior intts of the sd F. & G., his wife, as thrinbfe appearg in the same premes) unto the sd D. & E., upon the trusts thrin mentd. Dated, &c.

(Signed) H. & Co., &c.

IV. Notice to insurance office of assignment of a life policy pursuant to Policies of Assurance Act, 1867 (*a*).

To the —— Assurce Socy.

We hby give you notice that by an indre, dated, &c., & made, &c., a certn poly of assurce, effected with you by the sd K., *mtgor,* on his own life, for the sum of £——, & nod. —— in your books, & all moys assured by or to become payable under the sd poly, have been assned by the sd K. to the sd L., absolutely, *or*, "by way of mtge, as thrin mentd;" And we reqt you to give us a written acknmt of the rect of this notice. Dated, &c.

(Signed) M. & Co.,
Address.
Solors for the sd L.

V. Notice of intention to pay off mortgage (*b*).

To A., *mtgee*, of, &c.

I, B., *mtgor,* do hby give you notice that I shl, on the —— day of ——, *six months from the date of notice,* pay off all

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(*a*) See 30 & 31 Vict. c. 144, s. 3. The office is entitled to 5*s*. for giving the acknowledgment.

Notice of intention to pay off mortgage.

(*b*) This notice must be given, although not expressly stipulated for in the mortgage (see Fisher on Mortgages, 5th ed., p. 714), unless the mortgagee has taken steps to enforce payment, *Bovill* v. *Endle*, [1896] 1 Ch. 648, or an offer of six months' interest is made in lieu of notice (*Johnson* v. *Evans*, 61 L. T. N. S.

ppal moys & intt secd by an indre of mtge, dated the —— day of ——, & made, &c. As WITS my hand this —— day of ——.

VI.
Notice requiring payment of mortgage-money preparatory to a sale (*c*).

To A., *mtgor*, of, &c.

If the owners of the equity of redmon are unknown, or cannot be found, the notice shl be addressed, "To all psons intted in the equity of redmon of the ppty comprd in the mtge hinafter mentd." TAKE NOTICE that we, B., of, &c., & C., of &c., *mtgees*, do hby require you to pay off the ppal moys owing to us on the secy of an indre of mtge, dated, &c., & made, &c., togr with all intt thron, & further, that in default of your so doing for a period of three calr months from the date hrof, we intend to sell the ppty subjt to such mtge or such portion thof as we may think fit. As WITS our hands this —— day of ——.

VII.
The same where money is payable on demand (*d*).

To A., *mtgor*, of, &c.

I HBY demand of you immediate paymt of the sum of £—— owing to me on the secy of an indre, &c., & the intt at the rate of —— p.c. p.a. from the —— day of —— last owing in respt thof. Dated, &c.

VIII.
Notice by 2nd mortgagee to 1st mortgagee (*e*).

To A., *mtgee*, of, &c

I HBY give you notice that I have advced to K., *mtgor*, of &c., the sum of £——, the repaymt whof, with intt, is secd by

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18); or the mortgage is only equitable by deposit of deeds with a memorandum of deposit: *Fitzgerald's Trustee* v. *Mellersh*, [1892] 1 Ch. 385. A mortgagee of a reversionary interest in a fund in Court, which subsequently came into possession, was held entitled to six months' interest from the date of the service on him of a petition for the application of the fund in payment off of the mortgage debt: *Smith* v. *Smith*, [1891] 3 Ch. 550.

(*c*) This notice is necessary to the exercise of the statutory power of sale under s. 20 (1) of the C. A., 1881, and also usually in the case of an express power; but not before suing for the debt unless expressly required by the deed, though in practice a reasonable notice should of course be given. As to the form, see *Selwyn* v. *Garfit*, 38 Ch. D. 277.

(*d*) As to what is a sufficient demand, see *Toms* v. *Wilson*, 4 B. & S. 442; *Brighty* v. *Norton*, 3 B. & S. 305; *Ex parte Trevor*, 1 Ch. D. 297; *Bramwell* v. *Eglinton*, 5 B. & S. 39; *Massey* v. *Sladen*, L. R. 4 Ex. 13.

As to giving notice of second mortgage.

(*e*) This notice will, in the case of interests in personalty, give priority over an intermediate incumbrance, of which neither the subsequent mortgagees nor the first mortgagee had notice: *Re Holmes*, 29 Ch. D. 786; *Mutual Life* an indre, dated, &c., on certn, *give suff t description of the ppty,* now in mtge, to you, *or,* "on the —— comprd in a mtge to you effected by an indre dated," &c. As WITS, &c.

IX. Notice to mortgagor of transfer of mortgage (*a*).

To X., *mtgor,* of, &c.

TAKE NOTICE that by an indre, dated the —— day of ——, & made, betn, &c., for the conson thrin mentd, the sum of £—— owing to the sd A. on the secy of an indre of mtge, dated, &c., of leasehd premes situate, &c., togr with all intt due & to become due in respt thof, & the secs for the same has been transferred by the sd A. to the sd B. absolutely, to whom all paymts of ppal & intt must in future be made. Dated, &c.

(Signed) Y. & Co., Solors for the sd B.

X. Notice by purchaser of equity of redemption to mortgagee.

To Mr. ——, *mtgee.*

TAKE NOTICE that by an indre dated the —— day of ——, 18—, the ppty comprd in an indre of mtge dated the —— day of ——, & made betn —— [of wch mtge you are or claim to be transferee], has been sold & conveyed to ——, subjt to paymt of the ppal sum of £—— secd by such last-mentd indre. Dated the —— day of ——.

XI. Notice from mortgagee or purchaser of a rent-charge to owner or tenant of property charged.

To A., *owner or tenant,* of, &c.

I, B., *rent-chge owner,* of, &c., hby give you notice that I have become entled as mtgee, *or,* "pchaser," by virtue of an indre dated, &c., to a fee-farm rent or perpetual rent-chge of £—— p.a. chged upon the plot of ground & the house thron situate & being, &c., now in your ownership or reputed ownership, *or,* "tenancy," & payable half-yrly on the —— day of ——, &c. (*b*), & I require you to pay to me on the —— day

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Assurance Society v. *Langley*, 32 Ch. D. 460; but this rule has no application to interests in land, in regard to which notice gives no priority, *Union Bank of London* v. *Kent*, 39 Ch. D. 238. The notice will give priority over subsequent advances by the first mortgagee, although the first mortgage was to secure present and future advances, or a fluctuating balance of account, *Hopkinson* v. *Rolt*, 9 H. L. C. 514; *Bradford Banking Co.* v. *Briggs*, 12 App. Cas. 29; *West* v. *Williams*, [1899] 1 Ch. 132.

(*a*) As to priority of notice not affecting priority of equity, see *ante*, p. 224.

(*b*) In the case of property let on weekly tenancies, continue from this point as follows:—

Variation for weekly tenancy.

"And that one half-yr's instalmt amtg to £—— of such rent-of —— next the sum of £——, being the half-yrly instalmt of the sd rent-chge wch will become due on that day, & a similar sum on every —— day of ——, &c. Dated, &c.

(Signed) B.

XII. Notice by mortgagee to tenant to pay rent to him.

To A., *tenant*, of, &c.

I, B., *mtgee*, of, &c., do hby give you notice that I have become entled as mtgee by virtue of an indre, &c., to the rect of the rent of the house, No. —, —— Street, now held by you under Mr. ——, & I require you to pay to me, *or*, "to Mr. ——, of ——, on my behalf," the rent now due, & henceforth to become due, in respt thof. As WITS my hand this —— day of ——.

XIII. Notice determining guarantee (c).

To Messrs. B. & Co., Bankers.

TAKE NOTICE that in psuance of the power conferred on me by the guarantee hinafter referred to, I do hby determine & discontinue the guarantee dated, &c., wch I gave to you for paymt of certn moys due or to become due to you by A., of ——, & I give you further notice not to make any further advces or paymts to or on acct of, or give further credit to the sd A., or to incur or allow to be incurred any further liability under the sd guarantee.

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chge became due on, &c., & is still unpd, & I require you until further notice to pay to X., of, &c., on my behalf, all rent due & hrafter to become due from you in respt of the sd house, & I warn you that if you fail to comply with this notice a distress will be levied for the rent due from you & expses."

Receipt.

The following form of receipt may be appended to the notice:—

"Reced this —— day of —— from —— the occupier of the house situate, &c. (wch is subjt to a perpetual rent-chge of £—— now belongg to —— of, &c., & in arrear), the sum of £——, being a week's rent for such house due on, &c.

(Signed) X., &c.,
Agent for the above-named."

Withdrawal of guarantee.

(c) As to what amounts to a power to the guarantor to withdraw a guarantee, see *Lloyd's* v. *Harper*, 16 Ch. D. 290; *Calvert* v. *Gordon*, 3 Mann. & Ry. 124; *Bastow* v. *Bennett*, 3 Camp. 220; *Burgess* v. *Eve*, L. R. 13 Eq. 450.

XIV. Notice of dissolution of partnership.

NOTICE is hby given that the ptnp lately subsistg betn us, the undersigned A., B., & C., carrying on business as —— at —— under the style or firm of A. & Co. has this day been dissolved by mutual consent [so far as regards the sd B., who retires from the firm], *or*, "has this day determined by effluxion of time." [All debts due to, or owing by, the sd late firm will be reced & pd by the sd A. & C., who will continue the sd business under the psnt style or firm of A. & Co.] As WITS our hands this —— day of ——.

(Signed) A., &c.

XV. Notice to quit given by landlord to tenant (*a*).

To A., *tenant*, of, &c.

I B., of, &c. [as agent for & on behalf of C., of, &c.], hby give you notice to quit & deliver up posson of the —— & premes, situate at ——, in the coy of ——, wch you hold of me [of the sd C.] as tenant, on the —— day of —— next, *or if the day when the tenancy expires is not known, say*, "at the expiron of the yr of your tenancy wch will expire next after the —— day of —— next." As WITS my hand this —— day of ——.

XVI. Notice to quit given by tenant to landlord (*a*).

To A., *landlord*, of, &c.

I, B., of, &c. [as agent for & on behalf of C., of, &c.], hby give you notice, that I shl [he will] quit & deliver up posson of the —— & premes, situate at ——, in the coy of ——, now held by me [him] as your tenant, on the —— day of ——. As WITS my hand this —— day of ——.

XVII. Notice by landlord to tenant demanding possession after expiry of lease.

To A., *tenant*, of, &c.

As solors & agents for & on behalf of X., of, &c., & Y., of, &c., the owners of the house & premes comprd in a lease dated, &c., we hby give you notice that the sd lease expired by effluxion of time on the —— day of —— last, & we do hby demand immediate posson of the sd premes, & we hby also

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(*a*) See 39 Sol. J. 310, *Sidebotham* v. *Holland*, [1895] 1 Q. B. 378. As to agricultural tenancies from year to year, a year's notice by landlord or tenant instead of half a year's notice is now required unless otherwise expressly agreed; Agricultural Holdings (England) Act, 1883, s. 33; see *Barlow* v. *Teal*, 5 Q. B. D. 501.

give you notice that you will be held responsible for all damages wch may be sustained by the owners of the sd premes by reason of your wrongfully retaing posson thof, as well as for all dilapidons wch may be found thrin, & for any breach by you of the covts contd in the sd lease. Dated, &c.

(Signed) &c.

XVIII. Notice by lessor or lessee to determine a 21 years' lease at the expiration of the first 7 or 14 years, pursuant to a power in the lease (*b*).

To C., *landlord or tenant, as the case may be.*

In psuance of a power contd in the indre of lease, dated, &c., under wch the —— & premes situate, &c., thby demised are held, I, A., of, &c. [as agent for & on behalf of B.], the owner [of the revon expectant on the determinon] of the term created by the sd lease, do hby give you notice that it is my intention to determine the sd lease, & to put an end to the term thby created at the end of the first seven [fourteen] yrs of the sd term. As WITS my hand this —— day of ——.

XIX. Notice to tenant to repair.

To A., *tenant*, of, &c.

I, B., *landlord*, of, &c., hby give you notice that Mr. —— my surveyor, on the —— day of —— entd upon the messe known as ——, held by you of me under an indre of lease, dated, &c., & examined the condon thof, & found the defects & wants of repair mentd in the schdle hto, & further I require you to repair & make good such defects & wants of repair within —— calr months, psuant to the covts of the sd lease. As WITS my hand this —— day of ——.

XX. Notice by lessor to lessee to repair preparatory to a re-entry (*c*).

To A., *lessee*, the lessee of the house, bldgs, & premes, situate, &c., comprd in a lease dated, &c., & made betn, &c., & all others whom it may concern.

Be pleased to take notice as follows:—

1. By the above-mentd lease the lessee covted, *set out the covt to repair verbatim.*

(*b*) *Bury* v. *Thomson*, [1895] 1 Q. B. 231 and 696.

As to notice to lessee before re-entry under C. A., 1881.

(*c*) The C. A., 1881, s. 14, prevents a lessor from enforcing a forfeiture for breach of covenant or condition in a lease or underlease (*Nind* v. *Nineteenth, &c., Society*, [1894] 1 Q. B. 472) (except as mentioned in sub-secs. 6, as amended by C. A., 1892, s. 2 (2), and 8), unless and until the lessor serves on the lessee a notice (see *North London Land Co.* v. *Jacques*, 32 W. R. 283)

2. The above-mentd covt has been broken, & the parlar breaches wch are complained of are the committg or allowg the dilapidons mentd in the schdle hto.

3. I require you to remedy all the afsd breaches [& to make compenson to me in moy for such breaches].

4. On your failure to comply with this notice within a reasble time, it is my intention to re-enter upon the sd premes & claim damages for breach of the sd covt. As WITS my hand this —— day of ——.

B., *lessor*.

[*Schdle.*]

XXI. Notice from vendor's solicitor to purchaser to complete purchase.

To A., *pchaser*, of, &c.

BE pleased to take notice, that B., of, &c., the vendor of the freehd este & ppty situate at, &c., contracted to be pchased by you by an agreemt dated the —— day of —— last, is willg & ready to exte & to cause & procure all other necy pties (if any) to concur in a pper convce to you, or orwise as you may direct, of the fee simple of the premes comprd in the sd contract accdg to the condons & stipulons thrin contd, & that the vendor now calls upon & requires you witht further delay to tender such convce for exon, & pay the remr of the purchase or conson moy, togr with such intt for the same as may be payable, &

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specifying the particular breach (*Re Serle*, [1898] 1 Ch. 652, following *Fletcher* v. *Nokes*, [1897] 1 Ch. 271) complained of, and, if it is capable of remedy, requiring the lessee to remedy it, and in any case, requiring him to make compensation in money for the breach, and the lessee fails within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor; and the words "lessor" and "lessee" include their respective representatives and assigns; see sub-sec. (3). As to the mode of serving the notice, see s. 67.

The compensation does not include the charges of the lessor's solicitor and surveyor for preparing the notice, *Skinners' Co.* v. *Knight*, [1891] 2 Q. B. 542, unless the forfeiture is at the request of the lessee waived by the lessor in writing, or unless the lessee is relieved under C. A., 1892, sec. 2 (1). Possibly where the lessee applies for relief the Court may order such costs to be paid either as part of the terms of the relief, C. A., 1881, s. 14 (2), or under s. 69 (7). See W., B. & C., p. 168. It has been decided by the Court of Appeal (disapproving *North London Land Co.* v. *Jacques*, 32 W. R. 283; and *Greenfield* v. *Hanson*, 2 Times L. R. 876) that a notice may be good, though not requiring payment of compensation in money; the meaning of the act being that if wanted it must be claimed: *Lock* v. *Pearce*, [1892] 2 Ch. 328, on app. [1893] 2 Ch. 271, where another form of notice is set out.

further, that the vendor will hold you liable to make good to him such loss, costs, damages, & expses, as may be incurred by him by reason of your default in performg the sd contract. As WITS my hand this —— day of ——.

(Signed) C., Vendor's solor.

Wits.

XXII. Notice by tenant for life to trustees of intention to sell, &c., under the S. L. Acts, 1882 to 1890 (*a*).

To A., one of the trees [to Messrs. B. & Co., the solors to the trees] of a settlemt dated, &c., made on the marre of D. & E. his wife, *or*, "the will dated, &c., & provd on, &c., of X. deced."

I HBY give you notice that it is my intention under the powers of the Settled Land Acts, 1882 to 1890, to sell, *or*, "lease," *as the case may be*, the ppty descd in the schdle hto being pt of the ppty comprd in or subjt to the above-mentd settlemt, or "will."

Schdle givg short descron of ppty.

Dated this —— day of ——.

(Signed) D., *tenant for life.*

XXIII. Notice by solicitors of tenant for life to trustees of intention to exercise powers of S. L. Acts (*a*).

To A., of, &c., *as in last form.*

As solors for & on behalf of D., of, &c., we hby give you notice that it is the intention of the sd D., by virtue of the powers vested in him by the Settled Land Acts, 1882 to 1890, as tenant for life of the —— este, in the parish of, &c., & coy of, &c., under the above-mentd settlemt [will] to enter into a contract with X., of, &c., & Y., of, &c., for the sale or grt to them of a pce of land situate, &c., formg pt of the sd —— este,

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As to notice to trustees under S. L. A.

(*a*) See s. 45 of the Act of 1882, as amended by the Act of 1884, s. 5, and the Act of 1890, s. 7. S. 5 of the Act of 1884 declares that notice of a general intention to sell, exchange, partition, or lease is sufficient (reversing *pro tanto* *Re Ray*, 25 Ch. D. 464); but it must be considered doubtful whether a notice once given will remain effectual for any length of time, notwithstanding subsequent changes in the trustees or their solicitors; see Vaizey on Settlements, p. 712; and the enactment of 1884, s. 5 (1), does not apply to mortgages and charges, as to which *Re Ray* is still in force. On a new tenant for life succeeding, a fresh notice must undoubtedly be given. The notice must be given to the trustees' solicitors as well as the trustees themselves, and may of course be given by the solicitor of the tenant for life on his behalf, but by the Act of 1884, s. 5 (3), the trustees may waive notice. As to notice generally, see Vol. I., p. 475. As to waiver of notice, see note to form of waiver, *infra*.

& for carryg out certn arrangemts with respt to bldg upon pt of the sd —— este, & the makg of roads through the lands & ppty afsd, & for securg to the owners of the sd —— este & the sd X. & Y. rts of way & other easements & rts over such roads, & for other incidental pposes. Dated, &c.

(Signed) A. & Co.,
Address.
Solors for the sd D.

XXIV. Waiver by trustees of settlement or will, of notice under S. L. Acts (*a*).

To. A., of, &c., the tenant for life in posson of the hds & premes settled by, *settlemt or will.*

WE, X., of ——, & Y., of ——, the trees [appted by the Ct on the —— day of ——] of the above-mentd settlemt [will] for the pposes of the Settled Land Acts, 1882 to 1890, psuant to the power for this ppose given to us by section 5 of the Settled Land Act 1884, hby waive genlly the notice by the sd Acts or any of them required to be given to us & our solor of your intention to make any sale, exchange, parton or lease under the powers of the sd Acts, *or* "We, &c., hby agree to accept the notice dated, &c., given by you to us of your intention, &c., although less than one month, as sufficient." As WITS our hands this —— day of ——.

XXV. Advertisement of change of surname to be published in a newspaper (*b*).

I, A. B., *old surname* of ——, in the coy of ——, do hby give notice, that [in complice with the will of X., of, &c., Esq., deced, dated the —— day of —— & proved, &c.] I have assumed & intend henceforth upon all occasions & at all times to sign & use & be called & known by the surname of C. [only,] in lieu of & substiton for [*or*, in addon to] my psnt surname of

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(*a*) See the Act of 1884, 47 & 48 Vict. c. 18, s. 5, sub-s. 3. It should be noted that the power of waiver does not extend to mortgages, or to any dealings except sales, exchanges, partitions, and leases. The power to waive notice to the solicitor has been doubted, see Hood & Challis, p. 305; but it seems to be implied, the object of giving notice to the solicitor being presumably merely to ensure its reaching the trustees; otherwise the power of waiver would be nugatory. But *qy.* whether the trustees can waive notice to future trustees; and whether a *sole* trustee to whom notice would not suffice, under the Act of 1882, s. 39, can waive notice.

As to changing surname.

(*b*) A change of surname is now very commonly evidenced by a deed poll enrolled in the Central Office, accompanied by an advertisement in the newspapers, unless it takes place in compliance with a condition in a will, or settle-

B., & that such intd change or assumption of name is formally decld & evidced by a deed poll under my hand & seal, dated this day, & intd to be forthwith enrolled in the Central Office of the Supreme Ct of Judicature. In testimony whof I do hby sign & subscribe myself by such my intd future name. Dated, &c.

A. [B.] C.

Wits, X. Y., of, &c.

XXVI. Notice to executors to perform testator's covenants and to set aside a sum (*c*).

To B. & C., exors of X., late of, &c., deced.

Recite convce by A. to X. of land in fee with covts by X., for paymt of perpetual rent-chge, & for bldg, laying out roads, &c. AND WHAS the sd covts (other than the covt for paymt of the sd rent-chge) have not been pformed by the sd X., but the sd rent-chge has been pd up to the —— day of ——, Now I the undersigned A. do hby give you the above-named B. & C. as such exors as afsd, & each & every of you notice that I require you as such exors as afsd to observe, pform, & exte all the covts on the pt of the sd X. contd in the sd indre of, &c., & wch still remain or wch henceforth ought to be observed, pformed, or exted, includg the covt for paymt of the sd rent-chge), And I further give you & each of you notice to set apart a suffit pt of the este of the sd X. for the ppose of satisfying the psnt & future liability of the sd X. or his este under the sd covts bfe dividg, distributg, or orwise dealg with the sd este. AS WITS my hand this —— day of ——.

(Signed) A.

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ment, requiring some other mode of assumption. The deed poll may follow the wording of the advertisement. As to changing a surname, see 3 Dav. Prec., p. 357, note ; Elph. Interp. 128.

As to the obligation of executors with regard to contingent liabilities.

(*c*) See 22 & 23 Vict. c. 35, s. 28. This form is readily adaptable to the case of a lease, as to which see s. 27. See the section and notes thereto in Shelford's R. P. Stats., pp. 551, 552. The absence of such a notice as this does not affect the legal obligation of the executors to answer the contingent liability if it should ripen into an actual liability, except in the event of their advertising for creditors under 22 & 23 Vict. c. 35, s. 29 (see the next form), which protects them from claims *of which they have no notice ;* and the covenantee cannot require a portion of the testator's estate to be set aside to answer the liability (*King* v. *Malcott*, 9 Ha. 692), but the executors would have a right to set aside a fund for the purpose. As to the liability of the executors or administrators of a lessee in respect of rents and covenants, see 2 Wms. Executors, 1594 *et seq.* As to the right of creditors of the testator or intestate to follow assets in the hands of a legatee, *ib.* 1313, and see also 1205.

xxvii. Statutory notice to creditors (*a*).

NOTICE is hby given psuant to the Act of Parliament 22 & 23 Vict. c. 35, that all psons havg any claims or demands upon or agst the estate of K., late of ——, in the coy of ——, deced (who died on the —— day of ——, & whose will was proved by ——, of ——, in the coy of ——, the sole exor thrin named, on the —— day of ——, in [*or*, admon of whose este & effects was grted to ——, of ——, in the coy of ——, on the —— day of ——, by] the —— Registry of the Probate Divon of the High Ct of Justice) are hby required to send in the parlars of their debts or claims to the sd exor [admor] at the offices of the undersigned, his solors, on or bfe the —— day of —— ; And notice is hby also given, that after that day the sd exor [admor] will proceed to distribute the assets of the sd K., deced, amongst the pties entled thto, havg regard only to the claims of which he shl then have had notice, & that he will not be liable for the assets, or any pt thof, so distributed, to any pson of whose debt or claim he shl not then have had notice. Dated, &c.

A. & B., Solors for the sd exor [admor].

(*a*) See the Act referred to, s. 29, also ss. 27 and 28, *post*, p. 425, note ; Shelford's R. P. Stats., pp. 551—554.

PARTITIONS.

I.

AGREEMENT *for* PARTITION (*a*) *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *to be made by a single* ARBITRATOR. SOME SHARES *belonging to a* MARRIED WOMAN, *another* SHARE *being* VESTED *in* TRUSTEES, *with power to partition, and the remaining* SHARE *being in* SETTLEMENT. VARIATIONS *where one* SHARE *is vested in an* INFANT, *where the* CHOICE *of* ALLOTMENTS *is to be made by* LOT, *where the* PROPERTY *is subject to a* MORTGAGE, *and where the partition is of the* SURFACE *only without the* MINERALS.

Parties.

AGRMT made this —— day of ——, BETN A., *owner of some shares*, 1; B., & K., his wife, *owner of other shares* (*b*),

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As to partitions.

(*a*) As to partitions, see 5 Dav. Prec., pt. 1, 8 & 9 Vict. c. 106, ss. 3 and 4; and as to the doctrine to which the latter enactment has reference, see Co. Litt. 173 *b.*, 174 *a. b.* As to partitions by the Board of Agriculture under the General Inclosure Acts, see note to next Precedent. As to partitions and sales by the Court, see the Partition Acts, 1868, 1876 (31 & 32 Vict. c. 40) (ss. 10 and 11 of which are repealed by 56 & 57 Vict. c. 14); (39 & 40 Vict. c. 17), and the T. A., 1893 (56 & 57 Vict. c. 53). As to partition of the property of a lunatic, see the Lunacy Act, 1890 (53 Vict. c. 5) s. 120 (b).

Power of tenant for life to partition under S. L. Acts.

By the S. L. A., 1882, full powers of partition are given to tenants for life (as defined by s. 2, including other limited owners as defined by s. 58) under any settlement before or since the Act, by deed or will, of land of any tenure (including settlements by way of trust for sale as defined by s. 63, if an order of Court has been obtained under the S. L. A., 1884, s. 7), where the settlement comprises an undivided share, or where under the settlement the settled land has come to be held in undivided shares (ss. 3 (iv.), 19); and money may be paid by any party for equality (s. 3 (iv.)), and any money required for that purpose may be paid out of any capital money under the Act (ss. 21 (iv.), 32, 33); or may be raised by the tenant for life by mortgage (s. 18).

Subsidiary provisions.

The partition must be for the best consideration in land, or land and money,

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(*b*) See note (*a*) on p. 305.

2; C. & D., *trees of share,* hinafter called the trees, 3; E., *tenant for life of anor share,* 4. WHAS the sd A. is entled to

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that can reasonably be obtained, s. 4 (2); but may be subject to any stipulations as to title, &c. (s. 4 (5)); and any restriction or reservation as to building on or other user of the land, or as to mines and minerals, or the more beneficial working thereof, or any other thing, may be imposed or reserved and made binding on the tenant for life, and the settled land, or on any other party, and the land given on partition to him (s. 4 (6)). By s. 17 the partition may be of the surface apart from the minerals or *vice versâ;* and may be made subject to and in consideration of the reservation of an undivided share in minerals, and by the same section (which applied only to mineral properties), as extended by the Act of 1890, s. 5, easements or rights of any kind may be granted or reserved over or in relation to the settled land or other land, or may be given or taken on partition for land or any other easement or right. The tenant for life may, with the consent of the incumbrancer, charge any incumbrance affecting land given on partition on any other part of the settled land (s. 5, and see s. 24 (4, 5, 6)). Where the tenant for life is himself the owner of one of the other shares the trustees of the settlement are to stand in his place for the purpose of exercising the statutory powers: S. L. A., 1890, s. 12.

Power of tenant for life to convey.

The tenant for life is, by s. 20, empowered to execute the necessary conveyance for effecting the partition (see Vol. I., p. 471 *et seq.*); a deed relating to copyholds conferring the right to admittance without any surrender.

As to money received for equality.

Money received for equality of partition must be paid to the "trustees of the settlement" (as defined by s. 2 (8), or s. 63), or into Court at the option of the tenant for life (s. 22); and the receipt of the trustees is a good discharge (s. 40); but it is not to be paid to less than two trustees, unless the settlement authorises the receipt of capital trust money by one trustee (s. 39). As to appointing trustees where there are none, see s. 38, and the T. A., 1893, s. 47.

As to conveyance of land received on partition.

By s. 24 the land taken on partition must, if freehold, be conveyed to the subsisting uses of the settlement; and, if copyhold, or leasehold, upon trusts corresponding with the subsisting uses of the settlement, with a provision preventing leaseholds from vesting absolutely in a tenant in tail by purchase dying under twenty-one.

Power to enter into contracts.

Full power is given to the tenant for life to enter into, and vary or rescind, a contract for partition, which is to be binding on and enure for the benefit of his successors in title (s. 31); and as to carrying out contracts of previous owners, see also the Act of 1890, s. 6.

As to giving notice to trustees.

As to the requirement as to giving notice before exercising the statutory powers to the "trustees of the settlement" and their solicitor, see Vol. I., p. 475, note, and above, p. 299, note; and as to who are the trustees, note that s. 16 of the S. L. A., 1890, only applies to sales; see Vol. I., p. 474.

As to infants, &c.

As to a tenant for life who is an infant, married woman, or lunatic, see ss. 60, 61, 62; and as to the extension of the powers of the Act to the case of an infant who is absolutely entitled, see s. 59.

Express powers preserved.

Any express power of partitioning contained in the settlement is preserved, but cannot be exercised without the consent of the tenant for life (s. 56); unless the settlement is by trust for sale, see S. L. A., 1884, s. 6.

Registered land.

See further as to the general provisions of the Act, Vol. I., p. 467 *et seq.*

As to partitions of registered land, see L. T., R. 105.

As to minerals.

In the absence of an express power, trustees cannot join in a partition of the surface without the minerals, or *vice versâ*, without the sanction of the

Recitals. Title to shares in fee. Title of trustees. Title of tenant for life. Mortgage. Agreement.

—— undivided shares, & the sd B. & K. his wife are entled, in rt of the sd K., to —— undivided shares of & in the freehd, copyhd, & leasehd hds hinafter descd; AND WHAS one undivided —— share thof is vested in the trees, under the will of X. deced, dated, &c., & provd, &c., with power to concur in a parton of the sd premes, with or witht the minls, *or*, "is vested in X., an infant, under the will, &c., & the trees are the trees of the settlemt of such share for the pposes of the S. L. Acts, 1882 to 1890;" AND WHAS the sd E. is tenant for life in posson of the remaing —— share of the sd premes, under a settlemt dated, &c.; [AND WHAS all the sd hds & premes are subjt to a mtge effected by an indre dated, &c., for £—— & intt at —— p.c. p.a.; *State of mtge debt*, p. 7;] AND WHAS the sd pties hto (the sd B. contractg for himself & the sd K. his wife, & the sd E. contractg under the powers of the S. L. Acts, 1882 to 1890, & the trees contractg under the afsd power, *or*, "under the powers of the same Acts") have agrd to make a parton of the sd hds & premes in mner hinafter appearg; [But it has been agrd that such parton shl include the surface only of the sd lands, & shl not extend to or affect the mines & minls in, under, or upon the same or any pt thof (*b*).] NOW IT IS HBY AGRD as follows:—

Partition to be made by arbitrator.

1. M. of ——, hinafter called the arbitror, shl forthwith make a parton & divon of the freehd, copyhd, & leasehd hds descd in the schdle hto [exclusive of the mines & minls in, under, or

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Court under the T. A., 1893, s. 44; but the powers of the S. L. Acts, where applicable, enable this to be done.

In the above Precedent the tenant for life of one share joins in the partition under the powers of the S. L. Acts. In the case of the share vested in the trustees, parties of the third part, it is assumed that there is no tenant for life whose consent is necessary under s. 56 of the S. L. A., 1882 (as amended by the Act of 1884, s. 6), or that the owner is an infant, so that the powers of the Act are vested in the trustees under s. 59 or 60.

As to married women.

(*a*) If the title of the married woman arose, or she was married, after 1882, she can dispose of her share as a *feme sole* under the M. W. P. A., 1882, ss. 1, 2, and 5 (see p. 87, note). But if both the marriage and the acquisition of the property were prior to 1883, the case is governed by the old law; and the husband must join in the partition whenever this would have been necessary before that Act. Whether the wife's power of disposition depends on the old or new law, she can enter into contracts under the Act (s. 1) so as to bind her separate estate, if any; but where the property is not the wife's separate estate, the husband should be made a party to the contract.

(*b*) For a partition excepting underground and not surface minerals see Precedent V., p. 314.

PREC. I.

upon the same or any pt thof] into —— sevl allotmts, convenient to be held in sevlty, & as nearly as may be of eql value, *or*, "eql [*or*, proportionate] resply in value to the sevl undivided shares of the sd pties in the sd hds," &, if necy, shl direct any of the pties to give to any of the other pties a sum of moy for equality of parton, & fix the amt to be given.

Arbitrator to make survey, &c.

2. THE ARBITROR shl make or obtain such a survey & valuon of the sd hds, & such maps, plans, & schdles thof as may appear to him to be necy or pper for the ppose of the sd parton.

As to mortgage.

[3. THE ARBITROR shl direct how the sd mtge debt & the intt now due & to accrue due thron shl be borne, & what indemnity in respt thof shl be given by any of the pties to the others of them.]

Apportionment of rent of leaseholds.

4. THE ARBITROR shl direct how the rent reserved by the indre of lease under wch the sd leasehd hdts are held shl be apportioned betn the sd allotmts, & whether any & what indemnity in respt thof, & of the covts contd in the sd lease, shl be given by any of the pties to the others or other of them.

Allotment to parties.

5. AS SOON as the parton & divon shl have been made, the arbitror shl direct wch of the allotmts shl be taken by the respive pties entled to or contractg in relon to the sd undivided shares; [*or*, AS SOON as the parton & divon shl have been made, the pties entled to or contractg in relon to the sd undivided shares shl draw lots, in such mner as the arbitror shl decide, for priority of choice betn the sd allotmts, & shl successively make choice of their respive allotmts within such time as the arbitror shl decide,] & the allotmts shl be appropriated accdly.

Here insert any provons as to title to be shown by the sevl pties, commencg with the common root of title; see Vol. I. CONDONS OF SALE.

Completion.

6. THE PARTON shl be completed & carried into effect on the —— day of ——, or such later day as the arbitror may appt, on wch day the sevl pties hto & all other necy pties, if any, shl resply exte & do all such assurces & acts as shl be necy or pper for carrying the same into effect, & any question as to the form & contents of any of such assurces or the acts to be so done shl be determined by the arbitror, & upon the exon & doing of such assurces & acts, the moy, if any, wch shl become payable for equality of parton, shl be pd togr with intt after

the rate of —— p.c. p.a. from the time appted for the complon of the parton, in case the same shl not be then completed.

Covenants for title &c. (*a*).

7. THE SD A. & B. [& E.] shl enter into such implied statutory covts for title & further assurce as are usual in convces on sales with such modificons, if any, as the case may require, but the liability of the sd E. under such covts shl, as regards the revon of his share expectant on his life este, be restricted to the acts of himself & psons claimg under him, & the trees shl not be required to enter into any covt except the usual implied statutory covt agst incumbces, & any acknmt of the rt to prodon of munimts retained by them wch may be required.

Possession and outgoings.

8. THE RESPIVE pties shl be entled to the posson or rect of the rents & profits of their respive allotmts, & shl pay the outgoings in respt thof, from the time appted for the complon of the parton.

Retention of title deeds.

9. THE ARBITROR shl determine wch of the pties shl have the custody of such of the munimts of title as relate to more than one of the allotmts [but the trees shl not be required to give any covt or undertakg for safe custody of any munimts.]

Preparation of deeds.

10. THE ASSURCE of each allotmt & any other deed or instrumt relatg thto shl be prepared by & at the expse of the pty to whom the same shl be appropriated.

Incorporation of provisions of C. A., 1881 (*b*).

11. SUCH OF the provons of the Conv & Law of Ppty Act, 1881, with respt to contracts for sale as may be applicable shl as far as may be apply to & be deemed to be incorpd in this agrmt in the same mner as if the sd parton was intd to operate by way of mutual sales.

Costs.

12. THE COSTS of the sd parton, includg the remuneron to the arbitror & the costs of the preparon & exon of these psnts & of all acts & things to be done by virtue of these psnts, other than the costs incurred by the sevl pties in makg out & investigatg the sevl titles to the sd undivided shares, & save as hby or by the statute lastly hinbfe referred to or orwise provd, shl be borne by the sevl pties in the proportions wch shl

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(*a*) As to the statutory covenants for title, &c., and production of muniments, see Vol. I., pp. 406 and 421, notes.

(*b*) See s. 3 (3) as to recitals being evidence, and (6) as to expenses; and Vol. I., pp. 228, 229.

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be determined by the arbitror [in the proportions follg, that is to say, &c.].

Decision to be final.

13. THE DECISION of the arbitror as to any of the mres afsd shl be final & absolutely bindg on all pties.

Provision for appointment of new arbitrator.

14. IN CASE the arbitror, or any other arbitror appted by virtue of this psnt clause, shl die, or refuse, or become incapable to act bfe the mres refd to him shl have been determined, a majority of the sd pties hto (the trees countg as one pson), or in default thof, the president for the time being of the Incorpd Law Socy may, on the reqt of any one of the sd pties, nominate some other pson to be arbitror; & the pson so nominated shl, as to all the mres remaing to be determined, have the same powers & authorities as if he had been origlly nominated an arbitror. AS WITS the hands of the sd pties.

[*Schdle of pcels.*]

II.

PREC. II.

AGREEMENT *for* PARTITION *of* FREEHOLDS *to be made by* TWO ARBITRATORS *and effected through the* BOARD OF AGRICULTURE (*a*).

Recitals.

Title.

Agreement.

PARTIES, A., *owner of one undivided moiety*, 1; B., *tenant for life of the other moiety*, 2. WHAS the sd A. is entled in fee simple in posson to one undivided moiety of the hds descd in the schdle hto, & the sd B. is under an indre dated, &c., being the settlemt exted on his marre, tenant for life in posson of the other undivided moiety thof: AND WHAS the sd A. & B. are desirous of making a parton of the sd hds: NOW IT IS HBY AGRD as follows:

Partitions under Inclosure Acts.

(*a*) See "The Inclosure Acts, 1845 to 1876," 8 & 9 Vict. c. 118, ss. 90 to 94; 11 & 12 Vict. c. 99, ss. 13 and 14; 12 & 13 Vict. c. 83, s. 7; 15 & 16 Vict. c. 79, ss. 17, 30, and 31; 17 & 18 Vict. c. 97, s. 8; 20 & 21 Vict. c. 31, ss. 7 to 11; 22 & 23 Vict. c. 43, ss. 10 & 11; 31 & 32 Vict. c. 89, s. 2; 39 & 40 Vict. c. 56, s. 33; *Jacomb* v. *Turner*, [1892] 1 Q. B. 47. Recourse can be had to the Acts only where the inequality in value does not exceed one-eighth, which is to be compensated by a rent-charge.

PREC. II.

1. M. of ——, & N. of ——, hinafter called the arbitrors, *continue as in clause* 1 *of last Prec, substitutg for the last pt of the clause,* "& shl determine how any inequality in value shl be compensated."

Arbitrators to make partition.

2. *Clauses* 2 *&* 5 *of last Prec.*

6. As soon as the appropriation shl have been made the sd A. & B. shl forthwith apply to the Board of Agriculture for an order of parton under the seal of the sd Board, for the ppose of carrying the sd parton into effect.

Application to Board.

7. THE COSTS of the sd parton, includg the costs of this agrmt & of the sd applicon to the sd Board & the remuneron to the arbitrors, shl be borne by the pties eqlly.

Costs.

8. *As in last Prec, clause* 13, *addg,* & in case they shl differ in opinion as to any mre, the same shl be refd to an umpire to be chosen by them bfe they enter upon the business, & his decision shl be final.

Decision to be final.

9. IN CASE the sd M. or any other arbitror appted by the sd A. by virtue of this psnt clause shl die or refuse or become incapable to act bfe all the mres afsd shl have been determined, the sd A. may nominate anor arbitror in his place. *Similar power to B. to nominate arbitror in place of N.*; And every pson so nominated &c., *as in last Prec, clause* 14 (*b*). IN WITS, &c.

Provision for appointment of new arbitrators.

[*Schdle of pcels.*]

(*b*) If desired, a clause may be added giving a power of rescission on non-completion within a certain time, as in the agreement for an exchange, Vol. I. p. 648, clause 4.

III.

PREC. III.

PARTITION DEED *of* FREEHOLDS *between two* TENANTS *in* COMMON, JOINT TENANTS, *or* COPARCENERS *effected by* ONE *conveyance. Apportionment of* RENT-CHARGE.

Recitals.
Desire to make partition.
Sum to be paid for equality.
Payment.
Mode of assurance.
Witnesseth.
Grant.
As to one part.
To use of A. in severalty.
As to other part.
To use of B. in severalty.

Parties, A., *one co-owner*, 1; B., *anor co-owner*, 2; C., *grtee to uses*, 3. *Recite title of A. & B. as tenants in common, jt tenants, or co-parceners to hds descd in the schdles, subjt to a rent-chge.* AND WHAS the sd A. & B. are desirous of makg a parton of the sd pces of land & hds descd in the sd schdles hto, & they have agrd that the hds comprd in the first schdle hto shl be taken by & appropriated to the sd A. in sevlty, in lieu of his undivided share of the entirety of the sd hds, & that, &c., *premes in second schdle to be taken by B.*, & it has been further agrd that the sum of £—— shl be pd by the sd A. to the sd B. as & for equality of parton: AND WHAS the sd sum of £—— has been pd by the sd A. to the sd B. bfe the exon hrof, as the sd B. doth hby acknowe: AND WHAS the sd A. & B. are desirous that the hds so to be allotted to them resply shl be conveyed & assured in mner hinafter appearg: *Recital introductory to acknmt for prodon of deeds*, Vol. I., p. 382; NOW THIS INDRE WITNETH that for effectg the sd parton & in conson of the premes, the sd A. & B., [*if jt tenants*, "jtly **as benefl owners** do," *if tenants in common or co-parceners*, "each of them conveying **as benefl owner** of one moiety of the hds hby assured, *or*, 'of the respive share or shares, este & intt in the hds hby assured to wch he is entled as hinbfe appears,' & all other, if any, his share, este, or intt thrin, do & each of them doth"] hby grt unto the sd C., *Pcels by referce to two schdles; Habendum*, UNTO the sd C. & his hrs TO THE USES follg, that is to say, AS TO the entirety of the sd —— hds & premes comprd in the sd first schdle hto, TO THE USE of the sd A., his hrs & assns for ever, to be henceforth held by him & them in sevlty: AND AS to the entirety of the sd —— hds & premes comprd in the sd second schdle hto, TO THE USE of the sd B., his hrs & assns for ever, to be henceforth held by him & them in sevlty. PROVD ALWAYS & it is hby agrd that the sd hds comprd in the first schdle hto shl be

Clause apportioning rent-charge.

Powers of entry and distress (*a*).

chged with £—— p.a. as pt of the sd yrly rent-chge of £—— in exoneron of the sd hds comprd in the second schdle hto, & the sd hds comprd in the sd second schdle hto shl be chged with £—— p.a., the remr of the sd yrly rent-chge of £—— in exoneron of the sd hds comprd in the sd first schdle hto; AND IT IS hby agrd & decld that if & whenever any claim or demand shl be made upon the sd hds comprd in the first schdle hto, or any pt thof, or upon the owner or occupier of the same hds in respt of the sd pt hby chged upon the sd hds comprd in the second schdle hto of the sd yrly rent-chge of £——, & the sd A., his hrs or assns, shl in consequence of such claim or demand pay any moys or be put to any expse, the sd A., his hrs, exs, ads, or assns may at any time within the lives of H.M. the Queen & her descendants now livg, & of the survors or survor of them, & 21 yrs from the death of such survor, enter into & upon the sd hds comprd in the second schdle hto, or any pt thof & rece the rents & profits thof or may at any time distrain upon the sd lands in like mner as landlords may now do for rent in arrear, to the intent that thby or orwise all such moys & expses wch he the sd A., his hrs or assns, shl so pay or be put to as afsd, togr with the costs of or relatg to such entry & rect or distress, may be pd & satisfied; *similar power to B. in respt of other pt of rent-chge. If A. & B. are jt tenants, provo restrictg their liability under the statutory covts for title*, Vol. I., p. 419. *Acknmt & undertakg by A. to C. as to munimts retained by him*, Vol. I., p. 426. *The like by B. to C. as to those retained by him.* IN WITS, &c. (*b*).

[*Two Schdles.*]

(*a*) As to the validity of these powers, see Vol. I., p. 315, note, p. 538, note.

(*b*) To be executed in duplicate. A partition deed is chargeable with *ad valorem* duty on the sum (if any) paid or given for equality if exceeding £100—otherwise with 10*s.*; see the Stamp Act, 1891, s. 73, and Schedule, PARTITION.

Registered land.

A partition of registered land is made by an instrument in L. T. R., sch. 1, form 38. Where the partition is made under an order or award of the Board of Agriculture, the production of the order or award or a sealed copy thereof shall be a sufficient authority to the Registrar to make such entries and alterations in the register as are necessary to complete the partition; L. T. R. 105.

As a partition is not a sale, a deed of partition of unregistered land in a district where registration is compulsory appears not to require registration, even if money be given for equality of partition.

IV.

CONVEYANCE *on* PARTITION *of* FREEHOLDS, DISCHARGED *from a trust for* SALE, *to a* MARRIED WOMAN, *a* SUM *being paid for* EQUALITY, *the trustee for sale joining to convey the* LEGAL ESTATE. VARIATIONS *where the* WOMAN *is entitled for her* SEPARATE USE.

Recitals.

Family.

PARTIES, A., *survivg tree of legal este*, 1; B., 2; C., 3; [D. &] E., *his wife* (*a*), 4. *Recite will of X. devisg his real este to A. & M. in trust for K. for life, & after his death in trust to sell & divide proceeds among his chln eqlly, death of testor & probate* (*b*); *deaths of M. & K.* AND WHAS the sd K. had issue, three chln & no more, namely, the sd B., C., & E., all of whom have attned the age of twenty-one yrs; *Marre of E.* (*c*).

Real estate belonging to testator.

AND WHAS the real estate to wch the sd testor was entled at the time of his death, consisted of the freehd pces of land, messes & hds hby grted & certn other freehd hds situate, &c.;

Election not to convert, and agreement.

AND WHAS the sd B. & C. & the sd [D. &] E. have resply elected to take the sd hds & premes as real este dischged from the trust or diron for sale contd in the sd will as afsd, wch election is intd to be testified by their respive exon of these psnts & of the indres hinafter recited, & they have also agrd to make a parton of the sd premes in mner hinafter mentd, that is to say, that the sd hds situate at ——, wch are valued at £——, shl be taken by the sd B. in sevlty, & that the sd hds situate at ——, wch are valued at £——, shl be taken by the sd C. in sevlty, & that the hds hby grted, wch are valued at £——, shl be taken by the sd E. in sevlty, & that the sd [D. &]

As to married woman.

(*a*) If the married woman's title accrued, or if she was married after 1882, or is otherwise entitled for her separate use, she can act as a *feme sole*, under the M. W. P. A., 1882, and the concurrence of her husband would be unnecessary; see p. 89, note. Otherwise the case would be governed by the old law, and the husband must join and the wife must acknowledge the deed, although she is not a conveying party, to testify her consent to the partition and her election to take the property unconverted; see *Franks* v. *Bollans*, L. R. 3 Ch. 717.

(*b*) If the testator died after 1897, the assent of his executors to the devise will be necessary.

(*c*) It should be made to appear whether E. was married after 1882 or not, unless her title accrued after 1882, or she is otherwise shown to be entitled for her separate use.

E. shl pay the sum of £—— for equality of parton as follows, namely, £—— pt thof to the sd B., & £——, residue thof to the sd C.; AND WHAS the sd hds situate at —— are intd to be conveyed to the sd B. in sevlty by an indre bearg even date hrwith, & made, &c., & the sd hds situate at —— are intd to be conveyed to the sd C. in sevlty by anor indre bearg even date hrwith & made, &c.; [*Recital introductory to acknmt for prodon of deeds*, Vol. I., p. 382]; NOW THIS INDRE WITNETH that in conson of the convces intd to be effected by the sd respive indres of even date hrwith, & in conson also of the respive sums of £—— & £—— upon the exon hrof pd to the sd B. & C. resply by the sd [D. &] E., *rect by B. & C. resply*, the sd A. **as tree** (*d*), doth hby at the reqt as well of the sd B. & C. as of the sd [D. &] E., grt, & the sd B. & C., each of them conveying **as benefl owner** (*d*) of the respive share, este, & intt in the sd premes to wch he is entled as hinbfe appears, & all other, if any, his share, este, & intt thrin, do resply hby grt & confirm unto the sd E., *Pcels*, Vol. I., p. 385; *Habendum*, UNTO & TO THE USE of the sd E., her hrs & assns, to the intent that the entirety of the same premes may be henceforth vested in the sd E., her hrs & assns in sevlty as her septe ppty & este. *Statutory acknmt & undertakg by B. or C. with E. as to munimts*, Vol. I., p. 426. IN WITS, &c.

Conveyances to B. and C.

Witnesseth.

Grant.

To use of married woman in fee.

V.

PREC. V.

DEED *of* PARTITION *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS. ONE THIRD *belonging to an* ABSOLUTE OWNER, *another* THIRD *being in* STRICT SETTLEMENT *and the remaining* THIRD *being vested in* TRUSTEES *for* SALE, *with* POWER *to* PARTITION. PART *of the* PROPERTY *having been* EXCHANGED. A SUM *is paid for* EQUALITY. THE MINERALS *under part of the* FREEHOLDS *are* EXCEPTED, *and* EASEMENTS *and* RIGHTS *over one* ALLOTMENT *are created in favour of another. The* PARTITION *is effected by* MUTUAL

(*d*) See above, p. 2, and Vol. I., p. 406, note.

PREC. V.

CONVEYANCES, *operating partly under the* SETTLED LAND ACTS. VARIATIONS *where the* PARTITION *is effected by the* TRUSTEES *of the* STRICT SETTLEMENT *under an express power* (*a*).

PARTIES, A., *owner of one share*, 1; B., *tenant for life under strict settlemt of anor share*, 2; *C. & D., trees of that settlemt*, 3; E. & F., *trees of remaing share*, 4; K., *grtee to uses*, 5.

Recitals. *Recite will of X. devisg the freehd, copyhd, & leasehd hds specified in the first & second schdles, the first pt of the third schdle, & the fourth schdle to A., B., & G., as tenants in common or jt tenants; Death & probate* (*b*); [*Three sevl admittces of A., B., & G. to an undivided third of the copyhds, or as the case may be*]; *An exchange whby the hds in the fourth schdle were given in exchange for those in the second pt of the third schdle; Strict settlemt of B.'s undivided share, under wch B. is tenant for life, & C. & D. are trees of the settlemt within the Settled Land Acts. Convce of G.'s undivided share to E. & F. in trust for sale with power of parton, with or witht the minls, & with a special power to create easemts.* AND WHAS

Desire to make partition. the sd pties hto of the first four pts (other than the sd C. & D.) are desirous of makg a parton of the sd hds descd in the sd first, second, & third schdles hto, except as hinafter mentd; such parton being intd to be effected by the sd B. by virtue of the powers vested in him as tenant for life of his undivided share under the Settled Land Acts, 1882 to 1890, & by the sd E. & F. under the powers given to them in that behalf by the sd indre of, &c., *the convce in trust for sale*; AND WHAS in

Allotments. furtherce of such desire a survey & divon has been made thof, & the hds descd in the first schdle hto have been set apart as the

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(*a*) As to partitions under the S. L. Acts, 1882 to 1890, see p. 303, note; and as to partitioning under an express power where there is a tenant for life, see s. 56; and see Vol. I., p. 475, as to the operation of that section. As to the share vested in trustees for sale, E. and F., if there is a tenant for life, he cannot partition under the S. L. Acts without getting an order of Court (see above, p. 303, note); and if, as in this Precedent, the partition is effected under a power by the trustees, his consent is not necessary unless he has obtained an order of Court (see the Act of 1884, ss. 6, 7), or unless of course it is expressly required by the power. Where the partition is effected under the Acts, the land taken on partition must be conveyed to the uses or upon the trusts of the settlement according to s. 24, as to which see Vol. I., p. 490, note.

(*b*) See note (*b*), p. 312.

share to be allotted to the sd A. in sevlty in lieu & satisfon of his sd undivided third pt of the whole of the sd hds, & the sd hds descd in the second schdle hto have been set apart as the share to be allotted in sevlty to the sd B. & his succors in title, in lieu & satisfon of the undivided third pt of the whole of the sd hds wch is now subjt to the uses of the sd indre, &c., *the strict settlemt,* & the hds descd in the third schdle hto have been set apt as the share to be allotted to the sd E. & F., in sevlty upon the trusts of the sd indre of, &c., *the convce in trust for sale,* in lieu & satisfon of the undivided third pt of the whole of the sd hds wch is now vested in the sd E. & F. in trust as afsd; And it has been agrd that the sd A. shl pay the sum of £—— for eqlity of parton to the sd C. & D.; AND WHAS it has been also agrd that the enjoymt of the easemts & rts descd in the fifth schdle hto over the freehd hds descd in the third schdle hto shd be secd in mner hinafter appearg to the sd A., his hrs & assns, the owner or owners, & occupier or occupiers for the time being of the freehd hds descd in the first schdle hto; But it has been agrd that the parton so to be made shl include the surface only of the freehd hds descd in the first schdle hto, & shl not extend to or affect the mines & minls in, upon, or under the same or any pt thof, [except such stone, clay, brick earth, gravel, sand, & other minls and substces as can be got by surface workg as hinafter mentd]; AND WHAS it has been further agrd that the sd parton shl be effected in mner hinafter appearg; NOW THIS INDRE WITNETH that for effectg the sd parton & in consou of the sum of £—— now pd by the sd A. by the diron of the sd B. to the sd C. & D., the rect, &c. (*c*), & of the premes the

Payment for equality.

Agreement as to easements.

Agreement as to minerals.

Witnesseth.

(*c*) If the partition is effected by the trustees of the strict settlement under an express power, and they have no estate, the conveyance of the freeholds must be by revocation and appointment of the use, the tenant for life, if any, being a necessary consenting party under the S. L. A., 1882, s. 56. In that case the deed will continue from this point as follows:—

Variations for partition by trustees.

"And of the assurces made by the sd A. & by the sd E. & F. resply & of the premes, the sd C. & D. as trees, in exercise of the power for this ppose given to them by the sd indre of, &c., *the strict settlemt,* & of every other power enablg them in this behalf [& with the consent of the sd B.], do hby absolutely revoke ALL the uses, trusts, powers, & provons by & in the sd indre of, &c., decld & contd concerng the one third pt or other the share, este or intt thrin comprd of & in ALL & singr the

Revocation of uses of settlement.

Grant.
Freeholds.
Exception of minerals.
Habendum.
To uses.
As to part.

sd A. **as benefl owner** as to one eql third share & all other, if any, the share, este, or intt to wch he is entled of & in the freehd hds hby assured doth hby grt, & the sd B. **as benefl owner** as to one eql third share & all other, if any, the share, este, or intt comprd in the sd indre of settlemt of, &c., of & in the same hds by virtue of the powers of the Settled Land Acts, 1882 to 1890, & of every other power in that behalf him enablg doth hby grt & convey, & the sd E. & F. **as trees** as to the remaing one eql third share & all other, if any, the share, este, or intt comprd in the sd indre of, &c., *the convce in trust for sale*, of & in the same hds, by virtue of the powers given to them by the last mentd indre, & of every other power enablg them in this behalf, do hby grt & convey unto the sd K. ALL & SINGR the —— & hds descd or comprd in the first, second, & third schdles hto wch are of freehd tenure; BUT EXCEPT & reserved out of the assurce & parton hby made, all mines & minls in, upon, or under such of the sd freehd hds & premes as are descd or comprd in the first schdle hto, or any pt thof, [other than such stone, clay, brick earth, gravel, sand, & other minls & substces as can be got by quarrying or surface workgs witht underground workgs:] TO HOLD all the same premes UNTO the sd K. & his hrs, TO THE USES, upon the trusts, & subjt to the powers & provons hinafter expd concerng the same resply, that is to say, AS TO & concerng the entirety of such of the sd freehd premes as are descd or comprd in the first schdle

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Exception of minerals.
New appointment.
To uses after declared.
Further witnesseth.
Grant.

—— & hds of freehd tenure descd or comprd in the first, second, & third schdles hto, except as to the mines & minls in, upon, or under the freehd hds & premes descd or comprd in the first schdle hto, or any pt thof [other than such stone, clay, &c., *as in the text*], AND do hby direct & appt that the same one third pt or other share, este, or intt of & in all the sd freehd hds & premes, except as afsd, shl henceforth go & remain TO THE USES, upon the trusts, & subjt to the powers & provons hinafter expd concerng the same resply; AND THIS INDRE FURTHER WITNETH that for further effectg the sd parton, & in conson of the premes the sd A. **as benefl owner** as to one eql third share, &c., *as in the text*, & the sd B. **as benefl owner** as to one eql third share, & all other the share, &c., *comprd in the settlemt*, doth hby grt & convey, & the sd E. & F., &c., *as in the text*."

hto, except as afsd, TO THE USE of the sd A., his hrs & assns, to be henceforth held by him & them in sevlty, AND AS TO & concerng the entirety of such of the sd freehd premes as are descd or comprd in the second schdle hto, TO THE USES, upon the trusts, & subjt to the powers & provons wch under the sd indre of, &c., *the strict settlemt*, or by reason of the exercise of any power of charging thrin contd are subsistg with respt to the sd undivided third pt or other share thrin comprd of & in all the sd freehd premes, or as near thto as circes permit, but not so as to increase or multiply chges or powers of charging, & to be henceforth held in sevlty accdly, AND AS TO & concerng the entirety of such of the sd freehd premes as are descd & comprd in the sd third schdle hto, TO THE USE that the sd A., his hrs & assns, the owner or owners, & occupier or occupiers of the sd freehd hds descd in the first schdle hto, shl at all times hrafter have, use & enjoy the easemts & rts specified in the fifth schdle hto over the freehd hds descd & comprd in the third schdle hto (*a*), & subjt thto, TO THE USE of the sd E. & F., their hrs & assns, UPON the trusts, &c., *of the convce in trust for sale, as above*: AND THIS INDRE FURTHER WITNETH that for further effectg the sd parton (*b*), the sd A., so far only as relates to, & **as benefl owner** of the one eql third share & all other, if any, the share or intt wch is vested in him of & in the copyhd hds hby assured doth hby covt with the sd B. & his succors in title & also septely with the sd E. & F., their hrs & assns, that he, the sd A., or his hrs & all other necy pties, if any, will forthwith, at the cost of the respive psons for whose benefit the respive surrenders are made, surrender into the hands of the lords of the manors of

To absolute owner.

As to other part.

To uses of strict settlement.

As to other part.

To use of trustees for sale.

Further witnesseth,

Covenant to surrender.

(*a*) As to the creation of easements by way of use where the estate is in settlement, see the C. A., 1881, s. 62; and for a form of such a conveyance before the Act (the operation of which, however, is not clear), see 2 Dav. Prec., pt. 1, p. 263.

(*b*) Where the partition of the settled share is made under an express power vested in the trustees C. and D., the clause in the text will be modified as to that share by making C. and D. covenant "**as trees**" with A. and with E. and F. to surrender, each of the parties being in that case made to covenant with the others, "that they, the sd respive covtg pties, & all other necy parties, if any, will forthwith, at the cost of the respive psons for whose benefit the respive surrenders are to be made, surrender, &c."

Variation for partition by trustees under power.

PREC. V.

wch the copyhd hds hinafter mentd are resply holden accdg to the custom thof resply, & the sd B. **as benefl owner** as to one eql third share of the sd copyhd hds & all other, if any, the share, &c., *comprd in the settlemt,* & by virtue of the powers, &c., *as above,* doth hby convey (*a*), & the sd E. & F. **as trees** as to the one eql third share, & all other the share, &c., *comprd in the convce,* do hby covt with the sd A., his hrs & assns, & also septely with the sd B. & his succors in title, that they, the sd E. & F., or their hrs and all other necy pties, if any, will forthwith, at the cost, &c., surrender, &c., ALL & SINGR the —— & hds descd or comprd in the first, second, & third schdles hto, wch are of copyhd tenure: TO THE USES follg, that is to say, AS TO the entirety of the —— & hds specified in the first schdle hto wch are of copyhd tenure, TO THE USE of the sd A., his hrs & assns, accdg to the custom of the manor of wch the same are held, & by & under the rents, fines, suits, & services due & accustomed for the same, & so that the same shl henceforth be held in sevlty accdly, AND AS TO the entirety, &c., *as above of copyhds in second schdle to the use of C. & D. addg,* "UPON TRUSTS & subjt to powers & provons correspondg as nearly as the law & circes permit with the uses, trusts, powers, & provons to, on, & subjt to wch the freehd hds comprd in the second schdle hto are hinbfe conveyed or assured & so that the entirety of the sd copyhd premes comprd in the sd second schdle shl henceforth be held in sevlty accdly:" AND AS TO, &c., *similar declon of uses, &c., as to copyhds in third schdle in favour of E. & F.:* And the sd respive covtg pties do hby resply declare that in the meantime & until the sd sevl surrenders shl be made by them resply psuant to the covts hinbfe contd, they the sd covtg pties resply & their respive hrs will stand possed of the sd respive copyhd premes hinbfe covtd to be surrendered in trust for the respive psons in whose favour the same premes are resply covtd to be surrendered; AND THIS INDRE FURTHER WITNETH that for further effectg the sd parton & in conson, &c., the sd B. **as benefl owner** as to one eql third share and all other, if any, the share, &c., *comprd*

Copyholds.

To uses.

As to part.

To use of absolute owner.

As to other part.

To use of trustees of strict settlement (*b*).

As to other part to trustees for sale.

Declaration of trust till surrender.

Further witnesseth.

(*a*) See Vol. I., pp. 471 *et seq.*, note. The amalgamation of the covenants to surrender as to two thirds with the statutory conveyance of the remaining third, as in the text, seems substantially free from objection.

(*b*) See Vol. I., p. 490, note.

in the settlemt, of the leasehd hds next hinafter mentd & by virtue, &c., *as above,* doth hby assn & convey (*c*), & the sd E. & F. **as trees** as to one eql third share & all other, &c., & by virtue, &c., *as above,* do hby assign unto the sd A. (*d*), ALL THOSE the two sevl undivided third pts or shares & all other, if any, the pts, shares, & intts comprd in the sd respive indres of, &c., *the settlemt & convce,* of & in all such of the sd —— & hds descd or comprd in the sd first schdle hto as are of leasehd tenure; *Habendum to A., subjt to rents & covts, Vol. I.,* p. 404, to the intent that the entirety of the same premes shl henceforth be held by him & them in sevlty accdly (*e*); AND THIS INDRE FURTHER WITNETH that for further effectg the sd parton & in conson, &c., the sd A. **as benefl owner** as to one eql third share & all other, if any, the share, &c., to wch he is entled of & in the leasehd hds next hinafter mentd, doth hby by the diron of the sd B. assn, and the sd E. & F. **as trees** as to the one eql third share & all other, &c., & by virtue, &c., *as above,* do hby by the diron of the sd B., assn unto the sd C. & D., &c., *leasehds in second schdle, habendum to C. & D. subjt to rents & covts, upon trusts, &c., as in the case of the copyhds, addg, if appropriate,* "but so, nevs, that the benefl intt in the same premes shl not vest absolutely in any pson who is by the sd settlemt made by pchase, tenant in tail, or in tail male, *as the case may be,* & who dies under the age of twenty-one yrs, but

Assignment.

Leaseholds in first schedule.

Further witnesseth.

Assignment of other leaseholds.

(*c*) If the partition is made under an express power, the assignment of the share in settlement will be made by the trustees C. & D. in the same form as the assignment by E. and F., the tenant for life, if any, joining, if desired, to imply covenants for title as in the case of the freeholds.

(*d*) It may sometimes, in a case like the present, be convenient that the freeholds should be conveyed to K., as a provisional trustee, upon trust to re-convey each lot to the person to whom it is allotted, see APPOINTMENTS OF NEW TRUSTEES, Precedent XVIII., Vol. I., p. 141. The re-conveyance would be in the form of Precedent XIX., Vol. I., p. 143, *mutatis mutandis,* and the covenants, express or statutory, for title and production would be entered into with K.

As to assignment to provisional trustee.

(*e*) In the present case it is assumed that the leaseholds in the different schedules are held under separate leases. If they are held under the same lease, and are divided equally, each habendum must be made "subjt to the paymt of one eql third pt of the sd rent of £——, & to the covts by the lessee & condons contd in the sd indre of lease so far as the sd covts & condons relate to the sd premes comprd in the —— schdle hto." Cross powers of distress and entry should be added, as in Vol. I., p. 539.

Variations for one lease.

shl on the death of such pson under that age go as freehd hds conveyed to the uses afsd wd go" (*a*). *Similar assnmt to E. & F., of leasehds in third schdle,* UPON SUCH TRUSTS, &c., *as above mutatis mutandis. Clause restrictg B.'s liability under implied covts for title, Vol. I.*, p. 419. *Covt by A. with C. & D. & also septely with E. & F. to pay rent, &c., as to leases affectg ppty in the first schdle, Vol. I.*, p. 427, *mutatis mutandis; similar covts by C. & D. as to leases in second schdle, & by E. & F. as to leases in third schdle, & if desired a covt by B. for indemnity of C. & D., Vol. I.*, p. 428, *note* (*b*). PROVD ALWAYS, & it is hby agrd & decld that all the mines & minls in, upon, or under such of the sd hds & premes specified in the first schdle hto as are of freehd tenure [other than such surface stone, minls, and substces as afsd] shl continue to be held & enjoyed by the psons intted thrin in the same mner as if the parton hby effected had not been made (*c*). IN WITS, &c.

Covenants for payment of rent, &c.

Mines to belong to persons now entitled.

[*Five Schdles.*]

(*a*) See the S. L. A., 1882, s. 24; Vol. I., p. 490, note.

Variation for lease allotted equally.

(*b*) If one lease is allotted equally, substitute for these covenants a covenant by A. with C. and D., and E. and F., "that he, the sd A., his exs, &c., will henceforth durg the sd term pay one eql third pt of the rent reserved by the sd lease, & pform & observe the covts henceforth to be pformed & observed in respt of such of the sd premes thby demised as are specified in the first schdle hto," and similar covenants by C. and D. as to leaseholds in the 2nd schedule, and by E. & F. as to leaseholds in the 3rd schedule.

(*c*) The partition deed may be executed in triplicate, otherwise the party who retains it must give the usual acknowledgment and undertaking to the other parties. One or more acknowledgments and undertakings as to the other muniments of title retained by the respective parties will also probably be required.

PARTNERSHIP (*d*).

CLAUSES (*e*).

Duration and style of partnership for two partners (*f*).

I. THE SD A. & B. will become & remain ptners in the trade, *or*, "profession," or business of ——, [in continuon of the business carried on for many yrs by the sd A.] from the —— day of ——, durg the term of —— yrs [*or, if for life,* durg their jt lives] under the style or firm of —— [subjt nevs to determinon as hinafter provd].

The same for three or more partners (*f*).

II. THE SD A., B., C., & D., & the survors of them, will become & remain ptners in the trade, *or*, "profession," or business of —— [in continuon of the business carried on for many yrs by the sd A. & B.], from the —— day of ——, durg the term of —— yrs, if they or any two or more of them shl so long live, [*or, if for life,* durg so long as they or any two or more of them shl live] under the style or firm of —— [subjt nevs to determinon as hinafter provd].

Power to determine partnership by notice (*g*).

III. ANY PTNER may determine [retire from] the ptnp on or at any time after the —— day of ——, 18—, on givg not less than six calr months' previous notice in writg to the other ptners of his intention in that behalf, or leavg such notice at the countg-house, *or*, "office," of the ptnp, & at the expiron of

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(*d*) See Lindley on Partnership; Pollock on Partnership; 40 Sol. J. 46. The law on this subject has been amended and codified by the Partnership Act, 1890, 53 & 54 Vict. c. 39, with a provision (s. 46) that the rules of law and equity are to continue in force except so far as inconsistent with the Act. The material provisions of the Act are referred to *infra*, in the appropriate places.

(*e*) The forms under this head are, for the most part, adapted to a partnership between three or more; the alterations for two partners will be obvious.

(*f*) By the Partnership Act, 1890, s. 33 (1), a partnership is dissolved as to all the partners by the death or bankruptcy of any partner, subject to any agreement between them.

(*g*) By the Partnership Act, 1890, s. 32, a partnership is (subject to any agreement) dissolved, if entered into for a fixed term, by the expiration of such notice the ptnp shl determine accdly [so far as regards the ptner givg or leavg such notice].

Power to determine partnership as to one partner (*a*).

IV. THE SD A. & B., or such one of them as shl for the time being remain a ptner, may at any time terminate the sd ptnp so far as regards the sd C. on givg to him not less than —— calr months' notice in writg, or leavg such notice at the countg-house, *or*, "office," of the ptnp, [or on paying him the sum of £—— in lieu of such notice,] in wch case the ptnp shl, as regards the sd C., absolutely cease & determine on the expiron of such notice, [or on the paymt of such sum, as the case may be,] [& the sd C. shl have the like rt of terminatg the sd ptnp as regards himself, on givg the like notice to the sd A. & B., or such one of them as shl for the time being remain a ptner, or leavg such notice at the sd countg-house, *or*, "office."]

Death, &c., of one partner not to dissolve partnership.

V. THE DEATH [or retiremt] of any ptner shl not dissolve the ptnp betn the remaing ptners.

Place of business.

VI. THE BUSINESS of the ptnp shl be carried on at —— or at such other place as the ptners shl from time to time determine.

Capital.

VII. THE CAPL of the ptnp shl be the sum of £——, to be contributed by the sd ptners in eql shares, *or*, "in the shares or proportions follg, namely, the sum of £—— by the sd A., the sum of £—— by the sd B., & the sum of £—— by the sd C.," *or*, "in the shares or proportions in wch they are to share in the profits, as hinafter mentd," or in such other shares as may from time to time be agrd on betn them.

Capital where no amount fixed.

VIII. THE CAPL of the ptnp shl consist of such sum or sums of moy as shl from time to time be required for carrying on the sd business with advantage, & shl be contributed, &c., *as in last form.*

Provision where the assets and liabilities of the old firm are taken over by the new firm.

IX. THE FREEHD & leasehd ppties & assets late of the sd A., *senior ptner*, the parlars whof are set forth in the first pt of the schdle hto, shl become & be the ppty & assets of the firm hby constituted, & the mtge & other debts & liabilities mentd in the second pt of the sd schdle shl become & be the debts & liabilities of the firm hby constituted. The sd A. shl be credited in the ptnp books with the sum of £—— (being two eql fourth

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the term; and if for an undefined term by any partner giving notice of dissolution to the others; and see also s. 26. Dissolution may be decreed by the Court in the cases mentioned in s. 35. As to a partner becoming temporarily insane, see *J.* v. *S.*, [1894] 3 Ch. 72.

(*a*) See *Russell* v. *Russell*, 14 Ch. D. 471.

pts of the net value of the sd ppty & assets, after deductg the sd debts & liabilities) as so much capl brought in by him, & each of them the sd B. & C., *junior ptners*, shl in conson of the paymt by him to the sd A. of the sum of £—— (being one other fourth pt of the sd net value) as a premium for his admittce into the sd ptnp be credited with that amt as so much capl brought in by him. The sd A., his hrs, exs, or ads, shl if & when required so to do by the ptners or ptner for the time being in the sd firm (other than himself), & at the cost of the firm duly convey, assn, or orwise assure the sd freehd & leasehd ppties in such mner as to effectually vest the same subjt to the mtges & chges affectg the same in the ptners for the time being in jt tenancy as pt of their ptnp este, & in the meantime & until such convces or other assurces as afsd shl have been made & exted shl hold the same premes in trust for the ptners for the time being in jt tenancy as pt of their ptnp este and so that if the said A. shall die or retire from the ptnership it shall be lawful for the surviving or continug ptners or ptner to appt a new tree in his place (*b*).

One partner to be credited with value of stock-in-trade, &c., as part of his capital.

X. THE STK in trade & plant belongg to the sd business at the commencemt of the ptnp [the parlars whof are entd in the books of the sd business] shl be valued by a competent valuer, [shl be taken to be of the value of £——], & shl become the ppty of the ptnp, & the value thof shl be credited to the sd A. in the books of the firm as pt of the capl brought in by him.

Lease of business premises vested in one partner to be held in trust for firm.

XI. THE SD A., by whom the house & offices in wch the sd business is carried on are held for the residue of a term of —— yrs from the —— day of ——, grted by an indre of lease dated, &c., at a rent of, &c., shl stand possed thof in trust for the firm, & shl be indemnified by the firm agst such rent, & the covts & condons contd in the sd lease, & the sum of £——, being the estimated or agrd value of the sd lease, shl be credited to the sd A. in the books of the ptnp as pt of his capl thrin.

(*b*) In order not to make the partnership deed part of the title, it would be better, if possible, to convey the freeholds and leaseholds to the partners by a separate deed reciting the formation of the partnership but not referring to this deed. An agreement in the above form would be chargeable with *ad valorem* duty on the premium and half the amount due on the mortgage. By the Partnership Act, 1890, s. 20 (2), the legal estate in any land belonging to the partnership is to devolve according to the ordinary rules of law, but in trust as far as necessary for the persons interested under the agreement of partnership.

Provision for house of business and office furniture remaining property of one partner, subject to the user thereof by the firm at a rent.

XII. THE FREEHD house, offices, & bldgs at ——, in wch the sd business is now carried on, & the office furniture & fittgs thrin wch are resply the ppty of the sd A., shl so remain, & shl not in any way be deemed to be assets of the sd firm (*a*), but the sd ptnp shl have the rt of retaing & using the sd house, bldgs, furniture, & fittgs, for the pposes of the sd business durg so long as the ptners for the time being shl think fit, & shl durg such period pay all rates, taxes, & outgoings payable in respt thof & shl keep the same in tenantable repair, & shl also pay a rent of £—— p.a. to the sd A., his hrs & assns, for the use of the sd house, bldgs, furniture & premes.

Increase of capital.

XIII. IF AT any time or times hrafter it shl be determined [by a majority of the ptners] to increase the capl, the addonal capl reqd shl, unless orwise agrd, be adveed by the ptners in eql shares [in the proportions in wch they shl be entled to the net profits of the sd business].

Additional capital to be brought in by any one partner.

XIV. IF ANY ptner shl, with the consent of the [majority of the] other ptners, bring in addonal capl, or leave in the business as capl any pt of the net profits carried to his credit at any annl genl acct, the same shl be considered as a debt due to him from the ptnp, *or*, " be carried to the credit of his capl acct with the ptnp," & shl bear intt after the rate of —— p.c. p.a., payable half-yrly, but such addonal capl shl not be drawn out by him witht givg —— calr months' written notice of his intention so to do to the other ptners, or leavg such notice at the countg-house, *or*, " office," of the ptnp, & he shl be bound to draw out the same on a like notice being given to him by the other ptners, or left as afsd, & at the expiron of such last-mentd notice intt shl cease to be payable thron.

Interest on capital (*b*).

XV. EACH PTNER shl be credited in the books of the ptnp with intt at the rate of —— p.c. p.a. on his share of the capl for the time being, [*or*, on the excess of his capl for the time being over & above the sum of £——,] inclusive of any further

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Land whether converted into personalty.

(*a*) By the Partnership Act, 1890, s. 22, land which is partnership property is (unless the contrary intention appears) to be treated as between the partners or their representatives as personalty; the question whether (apart from the Act) there is a conversion, depends on the agreement of the parties; see Lindley on Partnership, p. 343, *Re Wilson*, [1893] 2 Ch. 340. The above clause seems to render the agreement chargeable with a lease stamp.

(*b*) By the Partnership Act, 1890, s. 24, subject to any agreement to the contrary, each partner is entitled to interest at 5 per cent. on any capital capl wch may hrafter be brought in by him with the consent of the other ptners, & such intt shl be pd to him on the —— day of —— in every yr bfe any divon of profits is made.

The same, another form (*b*).

XVI. EACH PTNER shl be credited in his capl acct with the ptnp with the amt or value of the capl origlly or subseqtly contributed by him as at the date of the same being so contributed, & each ptner shl be entled to intt at the rate of —— p.c. p.a. on the sum from time to time standg to his credit in his capl acct with the ptnp, such intt to be considered as payable qtrly on the usual qtr days, & such capl & intt shl be deemed to be a debt due from the ptnp.

Bankers.

XVII. THE BANKERS of the ptnp shl be Messrs. ——, or such other bankers as the [majority of the] ptners shl from time to time determine, & all moys & secs belongg to the ptnp, except such moys as are required for current expses, shl be pd into & deposited with the sd bank.

Provision as to moneys received and paid on account of partnership.

XVIII. ALL MOYS wch shl from time to time be reced by the ptners or any of them for or on acct of the ptnp shl be immedly pd to the bankers for the time being of the ptnp in the same drafts, cheques, bills, or cash in wch the same are reced, & all disbursemts for or on acct of the ptnp shl invariably be made by draft on such bankers or through the medium of the cash clerk of the ptnp.

Outgoings.

XIX. THE RENT of, & expses of repairs, alterons, & improvemts, & insce agst fire of any houses, bldgs, or offices from time to time belongg to or used for the pposes of the sd business, & all rates, taxes, assessmts, & other outgoings for or in respt of the same, & the salaries & wages [& maintce] of all clerks, travellers, apprentices, workmen, & psons employed in the sd business, & all expses, losses, & damages wch shl be incurred in carrying on the same or anywise relatg thto, & the intt on the capl payable to the respive ptners, shl be pd out of the rects & earngs of the sd business, & in case of deficiency thof then by the sd ptners in eql shares (*c*) [in the shares in wch they shl

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advanced by him beyond the amount agreed to be subscribed by him (sub-s. 3); but no interest is payable before the ascertainment of profits (sub-s. 4).

(*b*) See note (*b*) on p. 324.

(*c*) By the Partnership Act, 1890, s. 24 (1), unless otherwise agreed, profits and losses are to be shared equally; and see s. 44 as to the mode of settling accounts on dissolution.

for the time being be entled to the net profits of the sd business].

Provision for setting aside reserve fund.

XX. OUT OF the net profits of the sd business, as appearg upon the settlemt of every annl acct, wch shl remain after paymt to the ptners of intt on their capl, a sum calculated after the rate of £—— for every £100 of the net profits so remaing shl be set apt & carried to a septe acct to be called "the Reserve Fund." And the sums for the time being standg to the credit of the reserve fund shl from time to time be applied for the ppose of meetg extraordinary losses or expses, or eqlizg divds, or for such other pposes & in such mner as the ptners shl direct, & subjt thrto shl belong to the ptners in the proportions in which they are entled to profits. PROVD ALWAYS that in case & whenever the sum standg to the credit of the reserve fund shl amount to £——, the same shl not be further augmented by the retention of any pt of the subseqt net profits unless all the ptners shl orwise agree.

Profits (a).

XXI. THE PTNERS shl be entled to the net profits of the sd business [after makg provon for the reserve fund] in eql shares [in the shares follg, that is to say, the sd A. to two eql third pts thof, & each of them the sd B. & C. to one eql sixth pt thof,] & the net profits shl be divided betn the ptners as soon after the end of each yr of the ptnp as the genl annl acct shl have been taken & settled as hinafter provd.

Minimum sum guaranteed to one partner.

XXII. PROVD ALWAYS that in case the share of the sd C. in the sd net profits [after makg provon for the reserve fund] shl in any yr or yrs be less than £——, such share shl in any or every such yr be made up to £—— by the other ptners or ptner, the amt required for that ppose to be contributed by such other ptners if more than one in the shares in wch they shl be entled to share in the net profits, *or*, "if at the end of any period of three consecutive yrs (the first of such periods being considered as commencg on the —— day of ——, the second as commencg on the —— day of —— & so on), the share of the sd C. in the sd net profits durg the precedg three yrs after paymt of intt upon capal [& makg provon for the reserve fund] shl have been less than £—— in the whole, then & in every such case the amt of the deficiency shl be

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(*a*) See note (*c*) p. 325.

made up out of the earngs of the ensuing yr or yrs after dedon from the gross rects of the outgoings, losses, & expses of the business, but bfe the approprion of any pt of such rects to the paymt of intt or to profits."

Option to one partner to purchase a further share of the business.

XXIII. THE SD C. shall have the option, to be signified to the other ptners or ptner on or bfe the —— day of ——, of pchasg a further share not exceedg one —— share of the sd business & the net profits thof, as from such day, at a price of —— yrs' pchase calculated on an average of such net profits from the commencemt of the sd ptnp up to the then last genl annl acct, & the sum so pd shl be divided betn the sd A. & B. in the shares follg, &c., & after such pchase the share of the sd C. in the net profits shl be increased by the addon of the further share pchased by him, & the shares of the sd A. & B. in the net profits shl be correspondingly reduced, but so that their shares shl continue to bear the same proportion to each other as their origl shares.

Drawings.

XXIV. The sd ptners shl be at liberty by monthly drawgs or orwise to draw out of the sd business in anticipon of their respive shares of profits, & to be accted for at the next yrly [half-yrly] divon of profits, the follg sums, namely, the sd A. sums not exceedg £—— the sd B. sums not exceedg £——, & the sd C. sums not exceedg £—— durg any qtr of a yr, but in case in any yr [half-yr] the amt so drawn out by any ptner shl, on takg the genl acct, be found to be in excess of his share of the net profits [after providg for the reserve fund], then immedly after such acct shl have been taken & settled the excess so drawn out shl be refunded.

Surplus profits above authorised drawings to be capitalized.

XXV. IF THE share of any ptner in the net profits for any yr as ascertained upon takg the annl genl acct [after providg for the reserve fund] shl exceed the amt wch he shl be for the time being authorised to draw out durg that yr as provd by the last precedg clause (whether actually drawn out or not), the surplus of such share over & above the amt so authorised to be drawn out shl be retained and added to his share in the capl of the ptnp until the total capl shl amt to the sum of £——, & each ptner shl be entled to rece intt at the rate of —— p.c. p.a. on the sums so retained & carried to his credit as capal.

Sleeping partner.

XXVI. The sd K. shl not be required to [& shl not] interfere with the carryg on, managemt, or conduct of the sd business, & shl not sign the name of the firm.

As to residence.

XXVII. THE SD A. shl reside at the sd dwg-house at ——, where the sd business is to be carried on, free of rent, rates, taxes, assessmts, & expses of insce, wch shl be pd out of the assets of the firm, provd that he shl, on givg three calr months' notice in writg to the other ptners, be at liberty to lodge out of the sd house, & in such case shl be allowed the annl sum of £—— out of the assets of the firm in lieu of such lodging.

Attention to business (*a*).

XXVIII. EACH PTNER [other than the sd K.] shl, at all times durg the ptnp, devote the whole of his time & attention to the sd ptnp business, & diligently & faithfully employ himself thrin, & carry on the same for the greatest advantage of the ptnp ; *if desired, insert provons as to holidays.*

The same, when some partners not to be bound to attend to business (*a*).

XXIX. *C. to give whole time, &c., as in last clause.* The sd B. shl give such an amt of supervision & attention to the sd business as may be necy for the efficient managemt thof, & except to that extent shl not be bound to psonal attendce or participn thrin. The sd A. shl not be obliged to attend to the sd business any further than he shl think pper.

One partner to be manager at a salary (*a*).

XXX. The sd B. shl be the manager of the sd business & shl be entled to be pd for his services as such manager the annl sum of £—— bfe any divon of profits, & in addon to his share of profits, by eql qtrly paymts, the first paymt to be made on the —— day of ——.

Senior partner to have control.

XXXI. THE SD A. shl have the sole genl diron & control of the sd business & all mres connected thrwith, includg the engagemt and dismissal of all clerks & others employed thrin, & the decision as to the terms of their employmt as he may from time to time deem expedient for the intts & requiremts of the sd business. In the event of the death or retiremt of the sd A., the controllg power & rts conferred on him by this clause shl be vested in all the ptners for the time being, & in case of divon of opinion betn them the mre shl be decided by a majority of votes, each ptner havg a votg power proportionate to his rt to share in profits.

(*a*) By the Partnership Act, 1890, s. 24, unless otherwise agreed, every partner may take part in the management (sub-s. 5) ; but no partner is entitled to any remuneration for acting (sub-s. 6).

XXXII. No PTNER shl durg the continuce of the ptnp carry on or be concerned or intted directly or indirectly in the business of —— except on acct & for the benefit of the ptnp, & no ptner [except the sd A.] shl engage in, or undertake any other trade, business, or manufacture [or become a director of any jt stk co], witht the consent in writg of the other ptners or ptner. Not to engage in any other business (*b*).

XXXIII. ALL CHEQUES, bills, & other writgs, pledging the credit, or affectg the ppty of the ptnp, shl be signed by the sd A. or B., & not orwise. Cheques.

XXXIV. No PTNER shl, witht the consent of the other ptners or ptner, draw, accept, or sign any bill of exchange or promissory note, or contract any debt on acct of the ptnp, or employ any of the moys or effects thof, or in any mner pledge the credit thof, except in the usual and regular course of business. Not to pledge credit of firm (*c*).

XXXV. No BILL, promissory note, bond, or other secy, shl be signed, drawn, endorsed, or negotiated by any ptner in the name or on behalf of the firm, other than the *bonâ fide*, bills, notes or secs of the firm, wch shl have been regularly recorded in the books thof. The same. Another form (*c*).

XXXVI. No PTNER shl lend any moy or give credit to or have any dealgs on behalf of the ptnp with any pson, co, or corporon whom the other ptners or ptner shl prevsly have forbidden him to trust or deal with, & if he shl act contrary to this article he shl repay to the ptnp any loss wch may have been incurred thby. Not to give credit when forbidden.

XXXVII. No PTNER shl buy, order, or contract for any real or leasehd ppty or for any goods or articles for the use of the firm exceedg the value of £—— witht the prevs consent in writg of the other ptners or ptner, & in the event of any ptner No contract to exceed a certain amount.

(*b*) A partner is liable to account for profits made in a competing business carried on without the consent of his co-partners (Partnership Act, 1890, s. 30); or from any use by him of the partnership name or connection; *id.*, s. 29, and see *Aas* v. *Benham*, [1891] 2 Ch. 244. An agreement by a partner to give his whole time to the business should be accompanied by a negative stipulation against engaging in any other business, as in the above clause, in order to give the remedy by injunction; *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416.

(*c*) As to the power of a partner to pledge the credit of the firm or his co-partners, see the Partnership Act, 1890, s. 5, *et seq.*

so doing the other ptners or ptner shl have the option eir to take the ppty so bought, ordered, or contracted for, on behalf of the ptnp, or to let the same remain & be for the septe use of the ptner so buying, orderg, or contractg, in wch case he shl pay for the same out of his own moys.

Hiring clerks, &c.

XXXVIII. No ptner shl hire or dismiss, except in case of gross misconduct, any clerk [traveller] or pson in the employmt of the ptnp, or take any apprentice [articled clerk], witht the consent of the other ptners or ptner.

Not to become surety, &c.

XXXIX. No ptner shl, witht the prevs consent in writg of the other ptners or ptner, become bail, surety, or secy for any pson [or subscribe any policy of insce].

To be just.

XL. Each ptner shl be just & faithful to the other ptners or ptner in all transons relatg to the business of the ptnp, & shl give a true acct of the same to them when & so often as the same shl be reasbly required.

To give information (*a*).

XLI. Each ptner shl, upon every reasble reqt, inform the other ptners or ptner of all lres, accts, writgs, & other things wch shl come to his hands or knowledge concerng the business of the ptnp.

Journeys.

XLII. No ptner shall take or go any journey or voyage on acct of the firm witht the consent of the other ptners or ptner [& in the event of any ptner so doing he shl forfeit the sum of £——, to be forthwith pd by him to the other ptners in eql shares; & if any ptner shl at any time take or go any voyage or journey on acct of the firm with such consent, he shl be allowed his reasble expses of travellg & subsistce during such voyage or journey.]

Not to cause the property of the firm to be taken in execution (*b*).

XLIII. No ptner shl do or knowgly suffer anything whby the ppty of the ptnp may be seized, attached, or taken in exon.

Each partner to pay his private debts.

XLIV. Each ptner shl punctually pay & dischge his psnt & future septe debts & engagemts, & shl at all times keep indemnified the other ptners or ptner, & their or his repves, & the ppty of the ptnp, agst the same, & all actions, pcdgs, claims, & demands, in respt thof.

Not to assign share (*c*).

XLV. No ptner shl, witht the prevs consent in writg of

(*a*) S. 28 of the Partnership Act, 1890, is to the like effect.

(*b*) An infringement of this clause would (subject to any agreement) be a ground for dissolution; Partnership Act, 1890, s. 33 (2).

(*c*) By the Partnership Act, 1890, s. 24 (7), no person can be introduced as a the other ptners or ptner, assn or mtge his share or intt in the ptnp, or introduce any other pson as a ptner with him thrin [except that any ptner may introduce a son or nephew into the firm, & assn the whole or any pt of his share to him as hinafter provd].

Not to assign share without giving option of purchase to other partners.

XLVI. ANY PTNER shl be at liberty to sell his share in the ptnp, provd he shl prevsly have offered such share to the other ptners or ptner upon the same terms, & they or he shl have refused or neglected for one calr month to accept such offer.

Not to compound debts.

XLVII. NO PTNER shl, witht the consent of the other ptners or ptner, compound, rele, or dischge any debt wch shl be due or owing to the ptnp, witht receivg the full amt thof.

Accounts to be kept (*d*).

XLVIII. PPER BOOKS of acct shl be kept by the sd ptners, & entries made thrin of all such mres, transons, & things, as are usually entd in books of acct kept by psons engaged in concerns of a similar nature, [& the same shl be posted up under the psonal superintendce of——]; The sd books of acct, & all lres, papers, & documts belonging to the ptnp [except such as are to be kept at the bankers] shl be kept at the countg-house, *or* "office," of the ptnp, & each ptner shl at all times have free access to examine & copy the same.

Annual general account.

XLIX. ON THE —— day of ——, 18—, & on every subseqt —— day of ——, a genl acct shl be taken of the assets & liabilities of the ptnp, & of all dealgs & transons of the ptnp durg the then precedg yr [or, in the case of the first of such accts since the commencemt of the ptnp,] & of all mres & things usually comprehended in accts of a like nature, taken by psons engaged in a like business, & in takg such acct a just valuon shl be made of all items requirg valuon; Such genl acct (*e*) shl be entd in a book, wch shl be signed by all the

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partner without the consent of all the partners; and by s. 31, the assignee of the share of a partner acquires no rights except to receive the share of profits of the assigning partner during the continuance of the partnership and his share of assets on dissolution, and without any right to an account except on dissolution.

(*d*) By the Partnership Act, 1890, s. 24 (9), the books are to be kept at the place or principal place of business, each partner having a right of inspection, &c., subject to any agreement.

(*e*) Add if desired, "shl be prepared & audited by a competent [chartered] accountant to be from time to time agrd upon by the ptners, &."

ptners, & when so signed shl be bindg on them, save that if any manifest error shl be found thrin, & signified by any ptner to the other ptners within —— calr months after such signature the same shl be rectified.

Ordinary provision for winding-up on dissolution.

Variation where assets to vest in senior partner (a).

L. Upon the determinon of the ptnp a full & genl acct of the assets, liabilities, & transons of the ptnp shl be taken & (b) the assets & ppty thof shl with all convenient speed be realised & sold, & the debts due to the ptnp got in, & the proceeds shl be applied in dischge of the liabilities of the ptnp, & the expses of liquidatg the same, & realisg the assets thof, & in the next place, in paymt to each ptner, or his repves, of any unpd intt or profits comg to him, & of his share of the capl, & the surplus, if any, of the moys realised as afsd shl be divided betn the ptners or their repves in eql shares [in the shares in wch the ptners shl be entled to the net profit of the sd business], & the ptners, or their repves shl exte such instrmts for facilitatg & effectg the realison & divon of the assets of the ptnp, & for their mutual indemnity & rele & orwise as may be requisite or pper (c).

The same, short form referring to the Partnership Act, 1890.

LI. Upon the determinon of the ptnp by effluxion of time, the affairs thof shl be wound up, & the assets & liabilities dealt with in mner provd by the Ptnp Act, 1890, sects. 39 & 44.

Variation.

(a) The rights of the parties on dissolution are regulated, subject to any agreement, by the Partnership Act, 1890, ss. 39 to 44. As to the principles of distribution in the absence of express agreement, see *Binney* v. *Mutrie*, 12 App. Cas. 160.

(b) If the assets are to vest in the senior partner, add here :—" The sd business & the assets thof shl vest absolutely in the sd A., if living, & remaing a ptner, subjt to the dischge by him of the ptnp debts & liabilities, & to the paymt by him to the other ptners resply of the amt or value of their respive shares and intts in like mner as is hinafter provd in the case of the retiremt of such respive ptners durg the ptnp term, but if the sd A. shl have died or retired from the sd firm then."

Provision for deficiency.

(c) If desired add, " Provd that in case the moys realised as afsd shl not be sufft to pay in full the respive shares of the partners or their repves in the sd capl, the same shl be pd rateably as far as such moys will extend, & no ptner or his repves shl have any claim agst the others or other of them, or their or his repves, in respt of such deficiency."

LII. UPON THE determinon of the ptnp an acct shl be taken of the assets & liabilities thof, & a valuon shl be made of all such items in such acct as require and admit of valuon, & upon the complon of such acct & valuon the ptners, or their repves, shl forthwith make due provon for the satisfon of the liabilities of the ptnp, & of the costs of liquidatg the same [& subjt thto the assets [includg the good-will] of the ptnp shl be divided into shares of eql value, & one of such shares shl be allotted to & become the sole ppty of each ptner or his repves]: [*or*, "& subjt thto such pt of the assets of the ptnp as shl be eql in value to the capl then belonging to each ptner shl be allotted to him or his repves as his or their sole ppty, & the residue (if any) of the sd assets shl be divided betn & allotted to the ptners or their repves in the shares in wch the ptners shl be entled to the net profits"]: Provd that if it shl be so decided by a majority of the ptners, & for this ppose the repves of a deced ptner shl be substituted for him, any pt of the assets may be carried to a suspense acct to meet any contingent or unascertained liabilities of the ptnp; Provd also that all such instrumts or assurces as may be requisite or pper shl be exted by the ptners or their repves for facilitatg the gettg in of the outstandg assets, & for vestg the sole rt of ppty thrin in any pson or psons to whom the same shl be allotted, & for enablg him or them to recover the same, & for securg the dischge of the outstandg liabilities by the pson or psons who shl undertake such dischge, & indemnifyg the ptners or their repves touchg the premes, & for releasg each other from all claims on acct of the ptnp.

Another form, where the assets may be of a complex character, providing for division in specie.

LIII. IF THE ptnp shl expire by effluxion of time, the sd A. shl have the option, to be signified in writg to the other ptners or ptner not more than —— nor less than —— calr months bfe the expiron thof, to succeed to the whole of the sd business: And if the sd A. shl so signify his elon not to succeed thto, or shl fail within the time afsd so to signify his elon to succeed thto, then the sd B. shl have the like option, to be signified in like mner, not less than —— calr months bfe the expiron of the ptnp: And in the event of his electg within such time not to succeed to the sd business, or failg to signify his elon in mner afsd, then the sd C. shl have the like option to be signified in like mner bfe the expiron of the ptnp: And in case any ptner

Dissolution, the partners to have option in succession to succeed to the whole business (*d*).

(*d*) See the Partnership Act, 1890, s. 42 (2); *Daw* v. *Herring*, [1892] 1 Ch. 284.

shl elect to succeed to the sd business, as afsd, a genl acct & valuon shl be taken & made at the expiron of the ptnp, at the expse of the ptnp, of the assets & liabilities thof [includg the estimated value of the good-will] : And the ptner so succeedg to the sd business shl pay to the others or other of them resply the sum wch, on takg such acct, shl appear to be the value of their or his shares or share resply of the capl [good-will (*a*)], intt, & profits, after makg provon for all the liabilities of the ptnp, wch sum shl as one aggregate amt, bearg intt at the rate of —— p.c. p.a. from the expiron of the ptnp, be pd by such ptner as soon as conveniently may be, & at the latest within six calr months from the expiron of the ptnp, to the outgoing ptners or ptner; And the whole of the assets [& good-will] of the ptnp shl, as from such expiron, become the sole ppty of the ptner so succeedg to the sd business, who shl indemnify the other ptners or ptner agst all the outstandg liabilities of the ptnp on that day, & such assurces & instrmts if any shl be exted by the ptners at their jt expse as shl be necy for vestg in the ptner so succeedg all the assets of the ptnp, & for indemnifyg the out-going ptners or ptner agst the liabilities of the ptnp, & for releasg each other touchg the premes, & from all claims on acct of the ptnp. And in the meantime the outgoing ptners or ptner shl stand possed of the legal este of any ptnp ppty vested in them or him eir solely or jtly with any other pson or psons in trust for the ptner so succeedg. And it is hby agreed that it shl be lawful for the ptner so succeedg, his exs, ads, & assns, to appt a new tree or new trees of the ptnp ppty so vested as last afsd and in parlar at any time or times to appt such new trees or new tree in the place of such outgoing ptners or ptner or any tree appted under this power as if they or he were dead.

Declaration of trust.

Power to appoint new trustees.

Provision for death or retirement of partner, where his

LIV. IF ANY ptner shl die or retire bfe the expiron of the ptnp his share shl, as from his death or retiremt, belong to the remaing ptners or ptner, & if more than one, in shares pro-

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(*a*) If the word "goodwill" is not inserted here it will have to be included in the valuation on the footing that the succeeding partner, if he was not the purchaser, would not be restrained from carrying on a similar business (*Hall* v. *Barrows*, 4 De G. J. & S. 150) and would not have the right to solicit any customer of the firm or to carry on the business under the name of the firm : *Re David and Matthews*, [1899] 1 Ch. 378. As to the rights of the partner entitled to the goodwill, see *Trego* v. *Hunt*, [1896] A. C. 7 ; *Jennings* v. *Jennings*, [1898] 1 Ch. 378.

capital is to be paid out to him, or his representatives (*b*).

portionate to their then shares in the profits of the business, & the ptnp shl be continued betn the sd remaing ptners, if more than one, under the provons of these psnts so far as applicable, & the repves of the deced ptner or the retirg ptner (as the case may be) shl be entled to his share in the capl of the ptnp with intt to his death or retiremt, & to any profits wch shl have become payable, but shl not have been actually pd to him ; & also if he die or retire on the day for takg the annl genl acct, to his share of profits as ascertained on takg such acct ; & if he die or retire on any other day to an allowce in lieu of profits at the rate of —— p.c. p.a. (*c*) on his share in the sd capl up to the day of his death or retiremt, to be calculated, if he shl die or retire bfe the —— day of ——, *the first day for takg the annl acct,* from the commencemt of the ptnp, but if he shl die or retire after that day, then from the last past day for takg the annl genl acct (but subjt to the dedon of any drawgs on acct of current profits wch shl have been made by him) ; & the repves of such deced ptner, or such retirg ptner shl be bound by such last annl genl acct, & shl be excluded from examing the ptnp books ; & the amt to wch the repves of such deced ptner or such retirg ptner shl be entled as afsd shl, as one aggregate sum carryg intt at the rate of —— p.c. p.a. from the day of his death or retiremt, be pd to them or him by the survivg or continug ptners or ptner as soon as conveniently may be, & at the latest within six calr months from the day of his death or retiremt (*d*) ; & the whole of the assets (includg the good-will) of the ptnp as from the day of such death or retiremt as afsd, shl belong to & the whole of the liabilities thof as from that day shl be borne by the survivg or continug ptners or ptner solely ; & all such instrumts, assurces, transfers, indemnities, & reles shl be exted & made by the respive pties for givg effect to this psnt provon as are usual in such cases. [*Add declon of trust & power to appt new trees from form* LIII., *mutatis mutandis.*]

(*b*) This clause might be confined to death, and form LXIV., *infra*, inserted as to retirement.

(*c*) This is a usual provision, but if the capital is small compared with the profits, a proportionately high rate of interest should be fixed ; or the interest might be " at a rate eql to the average net profits durg the three yrs precedg the last day for takg the annl genl acct."

(*d*) See the Partnership Act, 1890, s. 43.

Proviso for event of annual account preceding death, &c., of a partner not having been taken (*a*).

LV. PROVD ALWAYS that if upon the death or retiremt of any ptner, it shl appear that the genl annl acct & valuon up to the —— day of —— then last past has not been taken & signed as hinbfe provd, the repves of the deced ptner or the retirg ptner [shl be entled to join with the survivg or continug ptners or ptner in takg such acct from the foot of the last genl acct wch shl have been taken & signed as afsd up to the —— day of —— precedg such death or retiremt, for the ppose of ascertaing the value of the share of the deced or retirg ptner in the capl & ppty of the ptnp upon the —— day of —— then last past, & givg effect to the provon lastly hinbfe contd,] [*or*, shl accept as bindg & conclusive the certfe of the survivg or continug ptners or ptner as to the amt coming to them or him as afsd, & shl not be entled in any mner to interfere in or to inspect or enquire into the books or affairs of the sd firm].

Variation.

Provision for death or retirement. Short form, where deceased or retiring partner is to have profits up to his death, or retirement.

LVI. IN THE event of the death or retiremt of any ptner, an acct & statemt shl be taken & made out of his share of the capl & effects of the ptnp, & of all unpd intt & profits belongg to him up to the time of his dece or retiremt, for wch ppose a valuon shl be made of any assets or effects requirg valuon [& of the good-will (*b*)], & the amt so ascertained to be due & owing to the deced or retirg ptner shl be pd by the survivg or continug ptners or ptner to him or his repves, within —— calr months from his dece or retiremt, with intt thron from his dece or retiremt, until paymt, at the rate of —— p.c. p.a., & on such paymt the share of the deced or retirg ptner in the ptnp ppty & effects shl go & belong to the survivg or continug ptners or ptner in the proportions (if more than one) in wch they shl have contributed to the pchase thof. [*Add declon of trust & power to appt new trees, form* LIII., *mutatis mutandis.*]

Provision for death or retirement of partner, where his capital is to be paid out by instalments.

LVII. *This will be the same as form* LIV., *substitutg for,* "his share in the capl of the ptnp with intt to his death," *the words,* "intt on his share in the capl of the ptnp to his death," *&* *insertg immedly bfe the words,* "& the whole of the assets, &c.," *the follg,* "& his share in the capl of the ptnp shl remain

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(*a*) See *Hunter* v. *Dowling*, [1893] 1 Ch. 391, [1895] 2 Ch. 223.

(*b*) In the absence of any provision as to goodwill on the death of a partner, it must be included in the valuation, on the footing that the surviving partner could set up a similar business; *Page* v. *Ratcliffe*, 76 L. T. 63. See p. 334 note.

as a loan to the survivg or continug ptners or ptner, repayable with intt at the rate of —— p.c. p.a. by the instalmts & at the times hinafter mentd, that is to say, the ppal sum by four eql instalmts, to be pd resply at the expiron of six, twelve, eighteen, & twenty-four calr months from his death or retiremt; & the int on the sd ppal sum, or on so much thof as shl for the time being remain unpd, shl be added to & pd with each such instalmt of ppal, & the paymt of such instalmts & intt shl be secd to the repves of the deced ptner or to the retirg ptner at the expse & by the jt & sevl bond or covt of the survivg or continug ptners or ptner."

Provision for death or retirement of partner, where his capital is to remain as a loan during the partnership term.

LVIII. *This will be the same as form* LIV., *substitutg for,* "his share in the capl of the ptnp with intt to his death," *the words,* "intt on his share in the capl of the ptnp to his death," *& insertg immedly bfe the words,* "the whole of the assets, &c.," *the follg,* "his share in the capl of the ptnp shall remain as a loan (*c*) to the survivg or continug ptners or ptner durg the residue of the sd term of —— yrs [or durg such shorter period as such survivg [or continug] ptners or ptner shl carry on the sd business eir alone or in ptnp with any other psons or pson in accordce with the provons of these psnts] bearg intt at the rate of —— p.c. p.a., payable on the usual qtr days (*d*); And the repaymt of the sd loan at the end of the sd period, togr with intt thron as afsd, shl be secd to the repves of the deced or the retirg ptner at the expse & by the jt & sevl bond or covt of the survivg or continug ptners or ptner."

Option to surviving partners to retain

LIX. IN CASE any ptner shl die bfe the expiron of the ptnp, the survivg ptners or ptner shl have the option of retaing his share in the capl of the ptnp in the sd business durg the

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As to bankruptcy.

(*c*) If the firm becomes bankrupt, or goes into liquidation, before all the debts due at the death of the deceased partner are paid, his representatives cannot prove for the moneys due to them in competition with other creditors: *Re Dixon, Ex parte Gordon*, L. R. 10 Ch. 160, *sub nom. Nanson* v. *Gordon*, 1 App. Cas. 195; *Ex parte Blythe*, 16 Ch. D. 620.

Variation.

(*d*) If desired add, "& addonal intt for each yr, durg wch the ptnp shl make any profits, eql to one —— pt of such profits, as appearg by the annl genl acct: such addonal intt to be pd on the signature of the annl genl acct, & an apportioned pt thof to be pd for any fractional pt of a yr at the commencemt & terminon of the sd loan." See Precedent XIV.

share of deceased partner in business, his representatives being sleeping partners.

residue of the term of the ptnp, such option to be signified to the repves of the deced ptner within a reasble time after his will shl have been proved or admon of his este shl have been grted; & in case the survivg ptners or ptner shl elect so to do, the sd business shl be carried on durg the residue of the sd term as from the death of the deced ptner, as nearly as may be accdg to the provons or these psnts, but so that the repves of the deced ptner shl succeed to his share in the business, & be substituted for him as sleepg ptners only: Provd that in case the survivg ptners or ptner shl continue the business by virtue of such option as afsd, all pper instrumts for carryg the provons of this clause into effect shl be exted & made betn them or him & the repves of the deced ptner: Provd also that if the net profits of the business wch shl be comg to the repves of such deced ptner shl in any yr be less than —— p.c. on the amt of the capl of such deced ptner retained in the sd business, it shl be lful for such repves to retire from the ptnp on givg not less than six calr months' notice to the other ptners or ptner of their intention so to do, or leavg such notice at the countg-house, *or*, "office," of the ptnp; & at the expiron of such notice the ptnp shl determine as to them, & they shl be entled to rece the share of capl of such deced ptner, with all intt & profits becomg due thron up to the expiron of such notice, on the same or the like footg as if the deced ptner had then died, & such option of retaing his capl as afsd had not been exercised.

Power for representatives of deceased partner to continue as sleeping partners.

LX. IF ANY ptner shl die bfe the expiron of the ptnp, his repves shl have the option, to be decld by notice in writg given to the survivg ptners or ptner, or left at the countg-house, *or*, "office," of the ptnp, within —— calr months after his death, of succeedg to his share in the sd business as from his death as sleepg ptners; & if such option shl be exercised the sd business shl be carried on durg the residue of the sd term as from the death of such deced ptner, as nearly as may be accdg to the provons of these psnts, but so that the repves of the deced ptner shl succeed to his share in the sd business, & be substituted for him as sleepg ptners only: Provd also that in case the repves of a deced ptner shl elect to become sleepg ptners, by virtue of such option as afsd, all pper instrumts for carryg the provons of this psnt clause into effect shl be exted & made betn them & the survivg ptners or ptner. *Add provo at end of last form, mutatis mutandis, if desired.*

Proviso as to rights of sleeping partners.

LXI. PROVD ALWAYS that after the death of any of the sd ptners his repves who may be sleepg ptners, or entled to any share of profits or paymt in proportion to profits as afsd, shl not have any power to interfere in or have any control over the conduct or managemt of the sd business, [& shl not be entled to require the prodon of any accts, vouchers, or documts, or any informon as to the transons or affairs thof, & the survivg ptners or ptner shl half-yrly on or as soon as may be after the 1st day of —— & the 1st day of ——, give or send to the repves of the deced ptner a statemt or balce-sheet showg the net profits of the business durg the precedg half-yr, & shl certify in writg to the best of their or his belief the correctness of such statemt or balce-sheet, wch shl thrupon become absolutely bindg on such repves] [*or*, but such repves or some pson nominated by them shl be entled at all reasble times to have access to & examine & copy the books, documts, & papers of the firm, & to join in takg the half-yrly genl acct & valuon].

General provisions as to execution of deeds, &c., on death of partner.

LXII. UPON THE death of a ptner, or at any time thrafter, the survivg ptners or ptner on the one hand & the repves of the deced ptner on the other hand shl exte such deeds of covt, powers of atty, assnmts, reles, or other instrumts as may be reasbly required for [providg for the loan of the capl of the deced ptner upon the terms afsd, or securg the repaymt thof with such intt & remuneron for the use thof as hinbfe provd, or for] the indemnity of the repves & assets of the deced ptner against the debts & engagemts of the ptnp, or for enablg the survivg ptners or ptner to get in the debts of the ptnp, or for the rele or assnmt to the survivg ptners or ptner of the ppty of the ptnp or any pt thof, or for any other object incidental or pper to the circes, every such deed or other instrumt to be prepared & exted at the jt & equal expse of the pty requirg the same & the other pty or pties.

Power to surviving or continuing partners to purchase lease of house of business

LXIII. IN CASE of the death or retiremt of the sd A., the survivg or continug ptners or ptner shl be at liberty, at any time within —— calr months after his dece or retiremt, to pchase the lease of the sd house & offices at ——, in case the same shl not have expired, at a valuon to be made under the arbitron clause hinafter contd, *or*, " by paymt to him or his repves of the on death or retirement of one partner.

sum follg, that is to say, if he shl die or retire on or bfe the —— day of ——, the sum of £——, & if he shl die or retire after that day, then such a sum as shl be payable, allowg for every yr wch shl have elapsed from the sd —— day of —— the sum of £—— in diminon of the sd sum of £——."

Provision for determination by notice by reference to provisions for death.

LXIV. IN THE event of the determinon of the ptnp as to any ptner by notice, under the provon in that behalf hinbfe contd, the like provons, *mutatis mutandis*, shl have effect as are hinbfe in clauses —— to —— contd, with respt to the death or retiremt of any ptner, as if the ptner as to whom the ptnp shl be determined by notice as afsd had died or retired at the time of such determinon.

Accruer of shares on death or retirement.

LXV. IN THE event of the retiremt or death durg the ptnp term of any ptner (whether origl or hrafter introduced) or the expulsion of any ptner under the power hrin contd, the shares in the net profits of the sd business to wch such ptner shl have been entled at the time of his retiremt or death or expulsion, shl (subjt to the provons hrin contd) accrue & belong to the continug ptners in the proportions in wch they shl for the time being be entled to share in profits.

Power of expulsion in case of breach of duty, &c. (*a*).

LXVI. PROVD ALWAYS that if any of the sd ptners shl at any time durg the ptnp commit or be guilty of any breach of any of the provons or stipulons contd in the clauses nod. —— & —— hinbfe contd, or any other flagrant breach of his duties as a ptner, or shl fail to acct for & pay over or refund any moys for wch he is acctable to the ptnp within —— days after being required so to do in writg by the other ptners or ptner, or shl act in any other respt contrary to the good faith wch ought to be observed betn ptners or shl become subjt to the bkptcy laws (*b*),

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(*a*) No majority of the partners has any power of expulsion without express agreement—Partnership Act, 1890, s. 25 ; but the bankruptcy of a partner is *ipso facto* a dissolution subject to any agreement, *id.*, s. 33 (1). The partners should, before they expel a partner, inform him of what they complain of, and give him an opportunity of explanation : *Barnes* v. *Youngs*, [1898] 1 Ch. 414. An expelled partner will not be restrained from carrying on business in competition with the firm : *Dawson* v. *Beeson*, 22 Ch. D. 504 ; see p. 342, form LXX. Lunacy of a partner does not of itself dissolve the firm, but the Court may do so : Lunacy Act, 1890, s. 119.

(*b*) It is doubtful whether the ordinary provision giving the continuing partners an option to take the share of an outgoing partner at a valuation payable by instalments, or for the retention of his share as a loan, would not be void in the case of bankruptcy : *Wilson* v. *Greenwood*, 1 Swanst. 471 ; *Collins* v. *Barker*, [1893] 1 Ch. 578.

or enter into any composon or arrangemt with or for the benefit of his credors [or shl become addicted to bettg or gamblg of any kind, or speculatg on the Stock Exchange or orwise, or to notorious intemperance or immorality, or other scandalous conduct detrimental to the ptnp business, or shl become permanently incapacitated by lunacy, ill-health, accident, or orwise from attendg to the sd business, or shl absent himself from the sd business for more than —— calr months in any one yr, or for more than —— consecutive days], then & in any such case the other ptners or ptner may, by notice in writg, given to him or (in case of his being found lunatic by inquison) to his committee, or left at the countg-house, *or*, "office," determine the ptnp so far as regards such last-mentd ptner, & publish a notice of dissolon of the ptnp in the name of & as agst such ptner, whrupon the ptnp shl immedly cease & determine accdly, witht prejudice to the remedies of the other ptners or ptner for any antecedent breach of any of the stipulons or agrmts afsd, & thrupon the like provons, *mutatis mutandis,* shl have effect respectg the paymt out of the share of the ptner as to whom the ptnp shl be determined as afsd or orwise, as if he had then died. Provd that if any question shl arise whether a case has happened to authorise the exercise of this power such question shl be refd to arbitron.

Allowance for good-will.

LXVII. On the death or retiremt of any ptner an allowce, *or*, "no allowce," shl be made to him or his repves in respt of the value of the good-will of the sd business.

Mode of valuing good-will.

LXVIII. In any case in wch it may become necy to value the good-will of the sd business the same shl, unless orwise argd, be taken to be equivalent in value to *three* times the average net yrly profits of the sd business durg the *three* precedg yrs, or from the commencement of the ptnp if less than that time.

As to publishing notice of retirement of partner (*c*).

LXIX. On the dissolon of the ptnp or the retiremt [or expulsion] of any ptner any of the ptners (includg the retirg [or expelled] ptner) may sign in the name & on behalf of all the ptners, a pper notice of the dissolon of the ptnp, & publish the same in the London Gazette, *or*, "the dissolon of the ptnp as regards the outgoing ptner shl be sufftly notified by a circular

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(*c*) The Partnership Act, 1890, s. 37, provides for this, but does not enable a partner to sign the names of his co-partners for the purpose.

addressed to the correspondents of the firm, & witht any advertisemt in the Gazette."

Retiring partner not to carry on business (*a*).

LXX. In the event of the retiremt [or expulsion] of any ptner he shl not durg the remr of the term of the sd ptnp carry on or engage or be inttd directly or indirectly in any business competg or interferg with the business of the sd firm, *or*, "in the business of —— within —— miles of the townhall of ——."

Power to dissolve in case of losses.

LXXI. Provd that if at any time owing to losses or accidents, or from any other cause whatever, one-fourth of the entire capl of the ptnp shl be sunk, or reasble apprehensions shl be entertained that a call wd require to be made for further capl to the extent of £—— in order to carry on the works & business of the ptnp, a majority in value of the ptners may require the ptnp to be dissolved & wound up, as if the same had expired by effluxion of time.

Provisions for payment of annuity to widow of one partner during her life (*b*).

LXXII. If the sd A. shl die bfe the expiron of the ptnp by effluxion of time, leavg a widow & also the sd B. & C., or eir of them, survivg him, his widow shl be entled durg her life [if the sd B. & C. or eir of them shl so long live] to an anny of £—— to commce from the death of the sd A., & to be deemed to accrue from day to day, but to be payable by eql qtrly paymts to be secd by the bond or deed of covt of & at the expense of the sd B. & C., or the survor of them, to be extd in favour of & delivered to such widow.

Provision for securing annuity to family of a deceased partner during (*b*)

LXXIII. If the sd A. shl die durg the sd term of —— yrs leavg a widow, child, or chn, his exs or ads shl be entled to an anny of £—— to commce from his death & to be deemed to accrue from day to day, but to be payable by eql qtrly paymts durg the residue of the sd term of —— yrs, *or*, "durg the jt lives of the sd B. & C. & the life of the survor of them," in case such widow

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(*a*) See p. 340, note (*a*); and as to restrictions on the right of carrying on business, see Vol. I., p. 31, note.

Provision for widow.

(*b*) This provision constitutes a trust for the widow free from the claims of the creditors of the deceased partner (*Re Flavell*, 25 Ch. D. 89), and does not *per se* constitute the widow a partner even if the annuity were made payable out of profits: Partnership Act, 1890, s. 2 (3) (*c*). A provision in a partnership deed for the widow or family of a partner to take effect on his death is a voluntary settlement formerly subjecting the interest so given to "account duty" under the Customs, &c., Acts, 1881 (44 & 45 Vict. c. 12), s. 38, and 1889 (52 & 53 Vict. c. 7), s. 11; *A.-G.* v. *Gosling*, [1892] 1 Q. B. 545; *A.-G.* v. *Wendt*, 39 Sol. J. 708; 43 W. R. 701 15 Rep. 528; and now subjecting it to estate duty under the F. A. 1894

Death duties.

or any such child shl so long live, & to be secd by the bond or deed of covt of the sd B. & C., or the survor of them in favour of the exs or ads of the sd A.

the partnership term.

Power to a partner to charge annuity for his family on his death or retirement.

LXXIV. THE SD A. shl have power in the event of his retirg from the sd firm durg the sd ptnp term by deed exted bfe or within three calr months after his retiremt, or in the event of his death while remaing a ptner, by will or codl to make provon by way of anny from & after his retiremt or death (as the case may be) or any later period for himself (if livg), & his wife & daurs, or any of them, durg their, his, or her respive lives or life, or any less period, out of the share & intt of him the sd A., in the profits of the sd business to the extent & in the mner follg, namely, the amt to be so provd & chgeable by way of anny shl not exceed in the whole the sum of £—— p.a. for every one p.c. of the net profits of the sd business to wch the sd A. shl at the time of his retiremt or death (as the case may be) be entled, & wch shl in that event pass or devolve to or upon the continug ptners or ptner, who shl be under a psonal obligon on the retiremt of the sd A., to enter into a bond or deed of covt to or in favour of the sd A., or his exs or ads, for securg paymt of such anny, but so that each such ptner (if more than one) shl be made liable to the extent only of a proportionate pt of the sd anny correspondg with the no. of such shares of profits to wch he shl succeed or become entled, the inton being that the sd anny may be made to continue & remain chgeable & payable whether the sd business shl continue to be carried on by the sd firm or any of the ptners thrin or any other psons in succession to them or not. The sd anny shl be made payable to the sd A., or his exs or ads (as the case may be) durg the lives or life of himself & his wife & daurs, or the survors or survor of them, or any less period for wch the same may be chged, by half-yrly or qtrly paymts as the sd A. may think fit: PROVD ALWAYS that in case any such anny shl have been chged by the sd A., any ptner subseqtly retirg or the repves of any ptner subseqtly dying shl be entled to be indemnified by the continug ptners or ptner agst any liability to the paymt of the sd anny or any pt thof.

Power to senior partner to introduce

LXXV. THE SD A. may in his lifetime while continug a ptner, or in the event of his retirg within three calr months after such retiremt, by deed nominate & introduce his yor son X.

a son into the firm (*a*).

(who is now articled to the sd firm) as a ptner in the sd firm, provd he shl have become duly qualified: And the sd A. may in eir of such events transfer & make over to the sd X. any pt or (in the latter event) the whole of the share & intt of him the sd A. in the sd business & the capl & profits thof: And in case the sd X. shl not have been admitted as a ptner in the lifetime of the sd A., he the sd A. may by will or codl nominate the sd X. (if & when duly qualified) to succeed him the sd A. as a ptner for the whole or any pt of his share & intt in the sd business & the capl & profits thof: And in eir of the sd cases the sd X. shl on executg a pper deed of accession defing his rts & liabilities as a ptner, become a ptner accdly, & be in a similar position in that respt (subjt to the provons hrin contd) as the sd B., with such variations (if any) as the case may require.

Similar power to junior partner.

The sd B. shl have the like power as is hinbfe given to the sd A. of introducg or nominatg by deed or will a son of him the sd B. to participate in or succeed to his share & intt in the sd business & the capl & profits thof or any pt thof, but such introdon or nominon shl be subjt to the approval of the sd A., if livg & remaing a ptner, or if not, of a majority of the other ptners for the time being.

Another form giving the like power to any partner.

LXXVI. ANY PTNER may at any time durg his lifetime, or by his will, introduce any son who shl have attnd the age of *twenty-five* yrs [but not more than one] as a ptner into the sd firm durg the residue of the sd term for any pt or the whole of his share in the ptnp, it being intd that the share of profits of such son shl be wholly derived from the share of his father, & may transfer to such son all or such pt as the ptner introducg him may think fit of the capl of such ptner in the sd business, & so that the admission of such son shl be upon the follg terms:—First, that such new ptner shl contribute to the losses of the ptnp in proportion to his share of profits; Secondly, that the father of the new ptner or a majority of the ptners for the time being may at any time within —— yrs from his admission, by notice in writg, determine the ptnp as regards him & publish a notice of such determinon; Thirdly, such terms, if any, as may be agrd upon betn the new ptner & his

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(*a*) As to the liability to estate duty, see note (*b*), p. 342; and to succession duty, *Att.-Gen.* v. *Brown*, 46 W. R. 145.

father as to the reverter to his father [or his repves] of the share or pt of the share of profits & capl assned to the son upon his death or ceasg to be a ptner [in his father's lifetime]; Fourthly, that on his ceasg to be a ptner, subjt to any such arrangemt as last afsd, he shl have the same rts as to the paymt of his share of capl, intt, & profits as his repves wd have had if he had then died; Fifthly, that the sd ptnp shl thceforth durg the residue of the sd term of —— yrs continue, & the provons hrin contd shl, as far as may be, apply to such son [or sons], & operate & take effect with such modificons as the admission of such new ptner & the change of circes may require, subjt to the modificons hrin contd; And Sixthly, that such new ptner on being admitted shl exte a pper deed of accession bindg him to observe the provons of these psnts so far as they shl apply to him & be capable of takg effect, & containg such other provons as may be necy or pper to effect the intentions hinbfe expd, & any dispute or diffce as to the form or contents of such deed shl be refd to arbitron.

Provision for securing the admission of two sons of the senior partner into the business, adapted to a partnership for life. Full form.

LXXVII. IT SHL be lful for the sd A. at any time or times durg his life to introduce into the ptnp, as an addonal ptner or ptners, any son or sons of his, not exceedg two, & to give to such son or sons the whole or any pt of the share of him, the sd A., in such profits & in the capl of the ptnp, & in the event of two sons of the sd A. being so introduced, the share given by him to them shl be divided betn them in such proportions as to profits & capl as the sd A. shl think fit. If the sd A. shl die havg introduced one son only into the ptnp, then any one other son of the sd A., or if the sd A. shl die witht havg introduced any son, then any two sons of the sd A., provd such son or sons shl be steady & respectable, shl at any time or times after attaing the age of —— yrs be entled to be reced into the business by the survivg or continug ptners or ptner as an apprentice or apprentices [*or, if a solor's business,* articled clerk or clerks,] witht any prem or paymt [except for the stamp or stamps on the articles], & any such son or sons who shl be so apprenticed [articled], whether in the lifetime of the sd A. or aftwds, shl, if he or they shl so desire, within —— months after the expiron or complon of such apprenticeship, [*or,* articles, provd he or they resply shl have been duly admitted to practise as a solor,] be admitted into the ptnp witht prem & upon the terms of such son or sons receivg the share of the profits & capl of the sd business to wch the sd A. wd, if he had been livg & remained a ptner, have been entled, inclusive of any addonal share of profits wch shl have accrued to the sd A. by the death or retiremt of any of the sd pnters, or wd have so accrued, or wd thrafter accrue to him in such event if he had been livg & remained a partner, to the intent that such son or such two sons togr shl succeed to the rts of the sd A. as regards sharg in the profits & capl of the sd business, & so that if two sons are so admitted, the sd share shl be divided betn them in such mner as they may agree, & in case eir of them shl die or retire, his share shl thrupon accrue to the other of them: PROVD ALWAYS that in case any son or sons of the sd A. shl be admitted into the ptnp, whether durg his lifetime or after his dece, under the provons hinbfe contd, the ptnp shl as regards the duron thof, continue durg so long as the ptners for the time being or any two of them shl live, [but subjt to determinon as regards any ptner by notice, as hinbfe provd,] & the capl of the sd A., standg to his credit in the sd business at his death shl remain in the sd business durg the term of the ptnp, & shl be transferred or allotted to such son or sons: PROVD ALSO that any son or sons of the sd A. who shl be so admitted shl, with respt to the managemt of the sd business, & the amt of control wch he or they shl be entled to exercise in relon thto, be in the same position & have the same rts as the sd B. as far as the case will admit, & shl be bound to give his or their whole time & attention faithfully & diligently to the sd business, & shl not be engaged in any other business, & in other respts such ptnp shl be upon the terms of this psnt ptnp as nearly as may be, the son or sons of the sd A. being, save as hrin orwise provd, placed on an eql footg with the sd B.: PROVD ALSO that in case the sd son or sons of the sd A. shl be admitted into the ptnp, whether in his lifetime or after his dece as afsd, he or they resply shl on being so admitted enter into a pper engagemt by deed to abide by & pform the stipulons & agrmts of these psnts so far as the same shl be applicable to him or them resply, & such deed or deeds shl contain such other provons as may be necy or pper to give effect to the intentions hinbfe expd, & in case any dispute or question shl arise as to the form or contents thof, the same shl be refd to arbitron: PROVD FURTHER that notwg the provons hinbfe contd, it shl be lful for the sd B. at any time after the dece of the sd A., & bfe both his sons shl have been admitted into the ptnp as afsd, to retire from carryg on the sd business, provd that he eir rece no paymt, anny, or pecuniary compenson for such retiremt, or that his succor or succors in the business enter into a deed of covt with the exs or ads of the sd A. to pform & observe the stipulons & agrmts hinbfe contd resptg the admission of the sd son or sons of the sd A. into the sd business, & in that event the sd B. shl not be liable for any default in the observce or pformce of the covt so entd into by such succor or succors.

General power to senior partner to introduce new partners.

LXXVIII. THE SD A. may at any time while remaing a ptner by deed introduce any other pson or psons (being duly qualified) as an addonal ptner or ptners to participate in the share & intt of him the sd A. in the sd business & the capl & profits thof or any pt thof (so far as not orwise disposed of), upon such terms & condons as he the sd A. may think fit, but not so as to confer upon any such new ptner or ptners any such controllg or special or exceptional powers as are conferred on him the sd A. by clauses —— & ——, or this psnt clause, & any premium or premiums reced by the sd A. upon any such introdon shl belong to him.

How notices to be given (*a*).

LXXIX. ANY NOTICE hby authorised or required to be given to the sd ptners, or any of them, shl be suffitly given by leavg the same addressed to them or him at the countg-house or office [ppal place of business] of the sd firm.

Questions to be decided by majority of partners (*b*).

LXXX. ALL QUESTIONS wch may arise durg the continuce of the sd ptnp touchg the conduct or managemt of the ptnp affairs, includg the employmt & dismissal of clerks & servants, the givg of credit, & the compoundg of debts & claims shl be decided by the majority in no. of the ptners: [AND IN ANY mres not hrin exply provd for, the conduct of the ptnp business shl, subjt to the decision of the majority of the ptners, be governed by the usage of the former firm of —— & Co., existg immedly bfe the commencemt of the ptnp hby constituted.]

(*a*) By the Partnership Act, 1890, s. 16, notice to an habitually acting partner is notice to the firm, except in case of fraud.

(*b*) By the Partnership Act, 1890, s. 24 (8), differences as to ordinary matters may be decided by a majority of the partners, but no change can be made in the nature of the business without the consent of all.

Arbitration clause.

LXXXI. If durg the continuce of the ptnp or at any time afterwards, any dispute, diffce, or question shl arise betn the sd ptners or any of them, or their or any of their repves, touchg the ptnp or the accts or transons thof, or the dissolon or windg up thof, or the constron, meang, or effect of these psnts, or anything hrin contd, or the rts & liabilities of the ptners or their repves under these psnts or orwise in relon to the premes, then every such dispute, diffce, or question shl be refd (*a*) to two arbitrators, one to be apptd by each party (*b*) or their umpire, *or,* "to a sole arbitrator," *or,* "to an official referee," psuant to the Arbitron Act, 1889 (*c*), or any statutory modificon or re-enactmt thof for the time being in force.

Mutual release in respect of former deed of partnership.

LXXXII. IN CONSON of the premes the sd A. & B. do & each of them doth hby mutually rele & dischge the other of them his hrs, exs, & ads, from all claims & demands, actions, & pcdgs whatsr for or in respt of the covts, agrmts, & provons contd in the deed of ptnp of the —— day of —— under wch the sd business has htofore been carried on, wch is intd to be wholly superseded by these psnt articles of ptnp.

(*a*) The following addition, to come in here, provides that all questions are to be decided by the senior partner, or otherwise by a majority :—

Variation.

"to the sole arbitramt & determinon of the sd A. if living & remaing a ptner or in the act of retirg from the sd firm whose decision (whether intted or not & whatever his intt may be) shl be absolutely final & binding on all pties, & in case he shl have died or previously retired from the sd firm or shl be unable or unwillg to act as referee, then unless a retired ptner or the repves of a deced ptner shl be a pty to the differce, the same shl be determined by a majority of the votes of the ptners for the time being, And the decision of such majority shl be bindg on all pties & conclusive, And in every case not hinbfe provd for or in case the mre in dispute or differce cannot be settled in mner afsd, then the same shl be refd to the decision of two arbitrators, *&c., as above.*"

(*b*) See Arbitration Act, 1889, 52 & 53 Vict. c. 49, s. 6. A reference to two arbitrators, one to be named by each party, is inapplicable if there are more than two partners. In this case it will be better to make the reference to a sole arbitrator only, so as to let in the provisions of the Act, s. 5.

Arbitration Act, 1889.

(*c*) Submissions to arbitration are now regulated by the Arbitration Act, 1889 (52 & 53 Vict. c. 49), which repeals the arbitration provisions of the

PRECEDENTS.

I.

PREC. I.

DEED *of* Partnership *between* Two Traders *for a* Term *of years.* Variations *where the* Partnership *is for* Life, *or* Determinable *on* Notice, *also where* Recitals *are inserted, and where a* Premium *is paid* (*d*).

Parties. Recitals. Trade carried on. Employment of new partner. Agreement. Witnesseth.

THIS INDRE, made the —— day of —— Betn A., of, &c., of the one pt; & B., of, &c., of the other pt; [Whas the sd A. has for some yrs past carried on the trade or business of ——, at ——: And whas the sd B. has for some time past been engaged as a confidential clerk in the sd business: And whas the sd A. has agrd to take the sd B. into ptnp with him in the sd business for the period & upon the terms hinafter mentd [in conson of the prem or sum of £ ——, wch has been pd or secd by the sd B. to the sd A., as the sd A. doth hby acknowe] (*e*); NOW THIS INDRE] WITNETH that [in conson

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Common Law Procedure Act, 1854. By s. 1, every submission, in the absence of expression of a contrary intention, is to have the same effect as if it had been made an order of Court. See Vol. I., p. 152, note.

As to premium.

(*d*) As to the return of the premium on dissolution, see the Partnership Act, 1890, s. 40; *Belfield* v. *Bourne*, [1894] 1 Ch. 521. The articles are chargeable with *ad valorem* duty on the premium under the head "Conveyance on Sale" in the Stamp Act, 1891; otherwise they would be liable only to 10*s.* if under seal, or 6*d.* if under hand.

(*e*) The following are other forms of recitals :—

Old partnership. Agreement for new partnership. Title to partnership property.

"Whas the sd pties hto have for some time past carried on business as —— in ptnp togr under articles of ptnp dated, &c., & they are entled to the capl of the sd ptnp consistg of, &c., in the shares follg, namely the sd A. to —— shares thof, &c.: And whas the sd pties have agrd that the sd ptnp shl be continued & carried on as from the —— day of ——, for the period & upon the terms hinafter expd, & that the sd existg articles of ptnp shl be hby superseded: And whas the sd A. & B. are entled in eql shares as pt of their ptnp ppty to the messes, lands, hds, & premes, situate, &c., in or upon wch the sd business is carried on, wch are ptly of freehd tenure & ptly

PREC. I.

Covenant. Clauses.

of the premes] each of them the sd A. & B. doth hby mutually covt & agree as follows, that is to say, *insert such of the follg clauses as may be applicable, the clauses being paragraphed & nod.: Duron & style of ptnp,* p. 321; [*Power to determine ptnp by notice,* p. 321;] *Place of business,* p. 322; *Provons as to capl, see clauses* VII. *to* XVI., pp. 322 *to* 325; *Bankers,* p. 325; *Outgoings,* p. 325; *Profits,* p. 326; *Drawgs, p.* 327; *Attention to business,* p. 328; *Not to engage in any other business,* p. 329; *Not to pledge credit of firm,* p. 329; *Not to give credit when forbidden,* p. 329; *No contract to exceed a certn amt,* p. 329; *Hiring clerks, &c.,* p. 330; *Not to become surety, &c.,* p. 330; [*To be just,* p. 330; *To give informon,* p. 330; *Journeys,* p. 330; *Not to cause the ppty of the firm to be taken in exon,* p. 330; *Each ptner to pay his private debts,* p. 330; *Not to assn share,* p. 330; *Not to compound debts,* p. 331 (*a*);] *Accts to be kept,* p. 331; *Annl genl acct,* p. 331; *Provons for windg up on expiron of ptnp by effluxion of time or death, &c., as the case may require, see* pp. 332 *et seq.; if the ptnp is for a term the usual provons will be Nos.* L. *&* LIV.; *if for life, the usual provon will be No.* L.; *if there is a power to retire on notice, the provons for that event will be inserted,* p. 340; [*Expulsion clause,* p. 340;] *Arbitron,* p. 348; *Add any of the other clauses above wch may be appropriate.* IN WITS, &c.

leasehd held under a lease, dated, &c., for a term of —— yrs from the —— day of ——, & to the fixed & moveable machy, plant, stk in trade, & other effects specified in the stk acct contd in the books of the sd ptnp, wch freehd & leasehd premes, machy, plant, stk, & effects are valued at £——."

(*a*) The clauses in these brackets may be omitted, if it is desired to shorten the draft.

II.

DEED *of* PARTNERSHIP *between* THREE *or more persons for a* TERM *of years.* VARIATIONS *where the* PARTNERSHIP *is for* LIFE, *or* DETERMINABLE *on* NOTICE. *Without* RECITALS.

PREC. II.

Parties, A., 1; B., 2; C., 3; D., 4: WITNETH that the sd pties hto hby mutually covt & agree as follows, that is to say; *insert the follg clauses, or such of them as may be appropriate, in nod. paragraphs; Duron & style of ptnp*, p. 321; *form* II.; [*Power to determine ptnp by notice*, p. 321;] *Death, &c., of one ptner not to dissolve ptnp as to others*, p. 322; *Place of business*, p. 322; *Provons as to capl*, pp. 322 *to* 325; *Bankers*, p. 325; *Outgoings*, p. 325; *Profits*, p. 326; *Drawgs*, p. 327; *Attention to business*, p. 328; *Not to engage in any other business*, p. 329; *Not to pledge credit*, p. 329; *Not to give credit when forbidden*, p. 329; *No contract to exceed a certn amt*, p. 329; *Hiring clerks*, p. 330; *Not to become surety*, p. 330; [*To be just*, p. 330; *To give informon*, p. 330; *Journeys*, p. 330; *Not to cause ppty of firm to be taken in exon*, p. 330; *Each ptner to pay his own private debts*, p. 330; *Not to assn share*, p. 330; *Not to compound debts*, p. 331 (*b*);] *Accts to be kept*, p. 331; *Annl genl acct*, p. 331; *Provons for windg up, &c., on expiron of ptnp or death, &c., as the case may require, see* pp. 332 *et seq.*; *if the ptnp is for a term the usual provons will be Nos.* L., LIV., LVI.; *if for the jt lives, the usual provon will be No.* L.; *if durg the lives of the ptners, or any two of them, the usual provons will be Nos.* L. & LIV.; *if there is a power to retire on notice, the provons for that event will be inserted*, p. 340; [*Expulsion clause*, p. 340]; *Arbitron clause*, p. 348; *Add any of the other clauses above that may be appropriate.* IN WITS, &c.

Witnesseth.
Covenant.
Clauses.

(*b*) The clauses in these brackets may be omitted, if it is desired to shorten the draft.

III.

PREC. III.

DEED *of* PARTNERSHIP *between* THREE PERSONS *as* SOLICITORS *for a* TERM. VARIATIONS *where the* PARTNERSHIP *is for* LIFE *or determinable on* NOTICE.

Recitals.

Business.

PARTIES, A., *one old ptner,* 1; B., *anor old ptner,* 2; C., *incomg ptner,* 3. WHAS the sd A. & B. are engaged in ptnp togr in the profession, practice, & business of solors & convcg at ——, & it has been agrd betn them & the sd C. that the sd C. shd pchase one eql —— share of their business, includg profits of offices & apptmts held by the sd A. & B. [other than the office of —— now held by the sd A.], for the sum of £—— (*a*), & that the sd A., B., & C. shd carry on the sd business in ptnp togr for the period & upon the terms hinafter mentd:

Witnesseth.

Covenant.

NOW THIS INDRE WITNETH that, in psuance of the sd agrmt, & in conson of the sum of £—— upon the exon hrof pd by the sd C. to the sd A. & B. (the rect whof is hby acknowed), & of the premes, each of them the sd A., B., & C., so far as the agrmts & provons hinafter contd, &c., *the remr of the deed will be similar to Prec.* II., p. 351, *so far as applicable, with the follg alterons & addonal clauses.*

Outgoings.

In the clause as to outgoings, p. 325, *after the words,* "in respt of the same," *add the words,* "includg the expses of pformg the duties of any such office or appmt as hinbfe mentd [except the sd office of ——]."

Appropriation of moneys received from clients of late firm.

PROVD ALWAYS that any moy reced from clients indebted to the sd late firm of —— for business transacted prevsly to the commencemt of the ptnp hby constituted or orwise, shl be appropriated & applied in the first instce in paymt of the moy so due or owing to the sd late firm.

One partner not to be required to act as advocate.

After attention to business, p. 328, *add, if so intd, a provo,* "that the sd A. shl not be reqd to act as an advocate."

Charges for business done for any partner or his family.

IN THE EVENT of the firm or any ptner actg as solor for or on behalf of any of the ptners or his wife or chn, or his or their trees, such business shl not be chged for except as to paymts out of pocket, & except costs recovered agst other pties, or out of any fund or este to wch such action or pcdg shl relate, wch costs shl be carried to the credit of the ptnp.

(*a*) See p. 349, note (*d*).

PREC. III.

Not to undertake business objected to by other partners.

After the clause, Not to engage in any other business, p. 329, *add,* "No ptner shl undertake the prosecon or dfce of any action or pcdg or transact any professional business on behalf of any pson or co other than himself or his own wife or chn, or his, her, or their trees, after havg been required in writg not to do so by the other ptners or ptner."

Clerks, &c.

No ptner shl hire or dismiss any clerk or servant or take any articled clerk [or change the London agents of the firm] witht the consent of the other ptners or ptner.

Accounts to be kept.

After accts to be kept, p. 331, *add,* "And each ptner shl enter in pper books kept for that ppose all attendces & professional business transacted by him, togr with all such circes of names, times, & places as may be necy or useful for the manifeston of the business of the ptnp. The sd books with all deeds, secs, lres, & documts relatg to the ptnp, shl be kept at the offices of the ptnp, & each ptner shl at all times have power to peruse or copy the same."

Provision as to the papers on death or retirement of partner,

After dissolon clauses, add, "On the death [or retiremt] of any ptner, all deeds, drafts, & other papers relatg to the business of the sd firm shl (subjt to the claims of any clients to whom the same may belong) remain in the hands of or be delivered to the survivg or continug ptners or ptner.

and on dissolution.

Upon the final determinon of the ptnp by effluxion of time, all deeds, drafts, & papers relatg to the business of the firm shl, unless the client or clients to whom the same belong object, be delivered to the ptner who shl usually have attended to the business of such client or clients. In wits, &c.

IV.

PREC. IV.

CONVEYANCE *of* Freehold *and* Leasehold *properties by* Two Partners *so as to vest them in the* Firm. *To accompany a partnership deed* (*b*).

Parties.

Recitals.

Parties, A. & B., 1; A., B., & C., 2. Whas the sd A. & B. lately carried on the business of, &c., at ——, in ptnp togr, &

(*b*) In order not to bring the partnership deed on to the title the partnership arrangement is recited without any specific reference to it. This deed requires

PREC. IV.

Partnership. Title.

Terms of partnership.

Agreement.

Witnesseth.

Conveyance.

they have admitted the sd C. into ptnp with them in the sd business: AND WHAS the sd A. & B. are entled to the freehd & leasehd hds wch are resply descd & comprd in the schdle hto as pt of the ppty & assets of the sd late ptnp, subjt to the mtges affectg the greater pt thof wch are mentd in the sd schdle: AND WHAS by the terms of the sd new ptnp with the sd C. it was agrd that the sd freehd & leasehd ppties (among other assets) shd become pt of the ppty & assets or jt stk of the sd new firm, subjt to the mtges affectg the same as afsd, & that each of them the sd A. & B. shd be credited in the ptnp books with the sum of £—— in respt thof as capl brought in by him, & that the sd C. shd bring in the sum of £—— in cash into the sd jt stk as his share of the capl of the sd ptnp, & shd be credited thrwith in the sd ptnp books in like mner: AND WHAS it has been also agrd that the sd freehd & leasehd premes shl be conveyed or assured by the sd A. & B., so as to vest the same in the sd A., B., & C., in jt tenancy as ptnp este in mner hinafter expd: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the premes, the sd A. & B. **as benefl owners** (to the intent to imply as to each of them the statutory covts for title & further assurce as to one undivided moiety only of the hds hby conveyed & assned), do hby grt, convey, & assn unto the sd A., B., & C., ALL & SINGR the messes, bldgs, lands, tenemts, & hds whatsr, & whether of freehd or leasehd tenure, wch are resply descd in the sd schdle hto, or by whatsr other descriptions or names the same respive premes are or may be known or distinguished, & all other (if any) the hds, whether of freehd or leasehd tenure, wch are comprd in any of the mtges mentd or refd to in the sd schdle: *habendum as ptnp ppty, Vol. I.*, p. 405, subjt to the sevl mtges & secs mentd or refd to in the sd schdle hto as affectg the sd respive premes or some of them, & the ppal moys & intt thby resply secd, & to the leases & tenancies of the sd respive premes. IN WITS, &c.

[*Schdle.*]

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only a 10*s*. stamp, as the money paid by the incoming partner is not a premium, but is brought into the joint stock as his contribution to the capital.

V.

EXTENSION *of* TERM *of* PARTNERSHIP *by* DEED *endorsed on or appended to* (*a*) *the* ARTICLES.

PREC. V.

PARTIES, A., 1; B., 2; C., 3. WHAS the term of —— yrs wch was by the within [above] written indre fixed for the duron of the ptnp thby agrd to be entd into, will expire on the —— day of —— next: AND WHAS the sd pties hto have agrd to continue the sd ptnp for the further term of —— yrs from the sd —— day of —— in mner [& subjt as] hinafter expd: NOW THIS INDRE WITNETH, that each of them the sd A., B. & C. doth hby covt with the others of them jtly & sevlly in mner follg, that is to say, That they the sd A., B., & C., & the survors of them will remain & continue ptners togr in the within [above] mentd trade or business for the further term of —— yrs, to be computed from the sd —— day of —— next, if they or any two of them shl so long live, upon such & the same terms & condons & subjt to such & the same provons & agrmts [except & subjt as hinafter mentd] as are in & by the within [above] written indre expd & contd in relon to the ptnp thby constituted, & so that all such terms, condons, provons, & agrmts, shl [subjt as hinafter mentd] remain in force & take effect in like mner as if the sd ptnp had been origlly entd into for the full term of —— yrs, instead of the sd term of —— yrs: PROVD ALWAYS, & it is hby agrd, &c., *here insert any modificons in the terms of the ptnp*]. IN WITS, &c.

Recitals. Expiration of term.

Agreement.

Witnesseth. Covenant. To continue partnership.

(*a*) As to appending deeds to prior deeds, see the C. A., 1881, s. 53, p. 200, note. As to the effect of continuing the business after the expiration of the term without fresh articles, see the Partnership Act, 1890, s. 27; *Neilson* v. *Mossend Iron Co.*, 11 App. Cas. 298; *Daw* v. *Herring*, [1892] 1 Ch. 284.

VI.

PREC. VI.

DEED *of* ACCESSION *on the* ADMISSION *of a* SON *of a* PARTNER *into the Firm pursuant to a* PROVISION *contained in the* ARTICLES *of* PARTNERSHIP. VARIATIONS *where the deed is* ENDORSED *on or* ANNEXED *to the articles* (*a*).

Recitals.

Articles of partnership.

Title to capital.

Desire to introduce son.

Witnesseth.

Introduction.

Assignment of share.

Parties, A., *father*, 1; B. *&* C., *two other old ptners*, 2; D., "son of the sd A.," 3. WHAS by certn articles of ptnp, hinafter called the articles, dated, &c., the sd A., B., & C. entd into mutual covts, amongst other things, that they wd become & remain ptners in the trade of ——, under the firm of ——, for the term of —— yrs, from the —— day of ——, *continue the recital, setting out the clauses as to capl, divon of profits, the power to any ptner to introduce a son, & the restrictive condons, if any, imposed on such introdon, & the diron as to a deed of accession:* AND WHAS the sd A., B., & C. have carried on the sd business up to the psnt time accdg to the provons of the sd articles, & they are now entled to the capl of the sd ptnp, consistg of, &c., in the shares follg, that is to say, the sd A. to ——, &c.: AND WHAS in psuance of the provons contd in the sd articles as afsd, the sd A. is desirous of introducg the sd D. as a ptner into the sd firm for the residue of the sd term, & to assn to him one eql fourth pt of the share of him the sd A. but subjt to the restrons & provons hinafter contd; NOW THIS INDRE WITNETH that in psuance of the sd provon contd in the sd articles, the sd A., with the consent (hby testified) of the sd B. & C., doth hby introduce the sd D. as a ptner into the sd firm, upon the terms & subjt to the restrons & provons hinafter contd: AND THE sd A. doth hby assn unto the sd D. One eql fourth pt of the share of him the sd A. in the capl, stk in trade, assets, goodwill, & profits of the

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Variations for endorsed or annexed deed.

(*a*) If the deed is endorsed or actually annexed, the recital of the articles will be omitted, and they will be referred to as "within, *or*, 'above' written"; the other consequential alterations will be obvious. If the deed is not actually annexed, it may be connected with the articles by adding after the parties, "intd to be read as supplemental or annexed to a deed of ptnp dated, &c., & made, &c. (hinafter called the ppal deed)." An incoming partner does not, of course, become liable to the debts previously incurred; Partnership Act, 1890, s. 17.

PREC. VI.

Habendum to son. Further witnesseth.

sd firm as from the —— day of ——, To HOLD the same UNTO the sd D. absolutely, subjt as hinafter mentd: AND THIS INDRE ALSO WITNETH that psuant to the provons contd in the sd articles, the sd A., B., C., & D., the sd pties hto, hby mutually covt & agree as follows:—

Covenants. To be partners.

1. THAT THEY the sd A., B., C., & D. will, as from the —— day of ——, be & remain ptners in the sd trade or business of —— for the residue of the sd term of —— yrs, upon the terms & subjt to the agrmts & provons contd in the sd articles, with such varions as are rendered necy by the introdon of the sd D. as a ptner, & the assnmt to him of the sd one-fourth pt of the share of the sd A. as afsd, & the provons hinafter contd, & will pform & observe the sd agrmts & provons, with such varions as afsd, in the same mner, as far as circes will admit, as if the sd D. had origlly been a pty to the sd articles, & the provons of these psnts had been embodied thrin.

2. *Here insert the special provons & restrons affectg the new ptner.* IN WITS, &c.

VII.

PREC. VII.

AGREEMENT *for the* SALE *by a* RETIRING PARTNER *with the* CONCURRENCE *of the continuing partners of his* SHARE *in the* PARTNERSHIP *to an* INCOMING PARTNER. VARIATIONS *where the continuing* PARTNERS *do* NOT CONCUR (*b*).

PARTIES, A., *retirg ptner*, 1; [B. *&* C., *continug ptners*, 2]; D., *incomg ptner*, 3.

(*b*) As to the power of a partner to assign his share, see the Partnership Act, 1890, s. 31, see *ante*, p. 331, and Lindley on Partnership, p. 366.

As to stamp on contracts for sale.

By the Stamp Act, 1891, s. 59 (1), in the case of a contract for the sale of any *equitable* estate or interest in any property, or for the sale of *any* estate or interest in any property, except (*inter alia*) land or goods, the *ad valorem* sale duty is chargeable on the contract instead of on the conveyance. Duty on equitable interests, and goodwill, &c., was sometimes avoided by dispensing with a formal conveyance, but this cannot now generally be done unless a written contract is also dispensed with; see *infra*, p. 361, note. Probably in a case like the present, where the price to be paid is not ascertained, the agreement must be stamped with 6*d*. or 10*s*., as the case may be, and the conveyance presented for stamping under s. 59 (5), with the *ad valorem* duty. See also

PREC. VII.

Agreement for sale.

1. THE SD A. [with the approval hby testified of the sd B. & C.] agrees to sell, & the sd D. agrees to pchase all the share & intt of the sd A. in the goodwill of the business of —— as the same is now carried on by the sd A. in ptnp with [the sd] B. & C. under the firm of —— & Co., psuant to articles of ptnp dated, &c., & in the assets, ppty & capl of the sd ptnp & in the profits thof as from the —— day of ——, *the last day of takg the annl genl acct.*

Consideration.

2. THE PCHASE moy shl be the sum of £—— & a further sum eql to what wd be the share of profits of the sd A. as from the sd —— day of —— to the day hrin mentd for complon calculated after the rate of profits durg the yr endg the —— day of —— last as appearg from the genl acct taken on that day by the firm; but the sd D. shl be entled to deduct from the pchase moy all moys now already drawn out or at any time bfe complon to be drawn out by the sd A. in anticipon of his share of profits for the current year.

Completion and conveyance.

3. THE PCHASE shl be completed on the —— day of —— at the office of Messrs. —— the solors of the sd A. [B. & C.] at wch time & place the sd A. shl upon paymt of the pchase moy (subjt to such dedon if any as afsd) exte a pper assnmt of the sd premes to the sd D., with such powers of atty & other provons as may be pper [& the sd B. & C. shl concur in such assnmt]. If from any cause whatever other than the wilful default of the sd A., the pchase shall not be completed on or bfe that day the sd D. shl pay to the sd A. intt on the pchase moy (after makg such dedons as afsd) at the rate of —— p.c. p.a. from that day until complon.

Indemnity.

4. PPER INSTRUMTS shl be exted for the indemnity of the sd D. by the sd A. from all the debts, liabilities, & engagemts of the firm, if any, entd into, accepted, or given bfe the sd —— day of —— wch do not appear in the books of the sd ptnp & for the indemnity of the sd A. & his repves agst all the outstandg debts, liabilities, & engagemts of the firm wch appear in the books of the ptnp.

Provision for deed of accession.

5. THE SD B., C., & D. shl upon the complon of the sd pchase, [*If the continug ptners are not pties to the agrmt say,*

Vol. I., p. 884. As regards the liability to duty in respect of the covenant to indemnify the deceased or retiring partner against the debts, the question will be the same as in the case of an assignment, as to which see p. 361, note.

"THE SD D., shl if & when required by the sd B. & C."] exte a deed of accession containg mutual covts by the sd B., C., & D., to be & remain ptners in the sd business of —— for the residue of the term of —— yrs from the —— day of —— upon the terms & subjt to the agrmts & provons contd in the sd articles with such varions as are rendered necy by the introdon of the sd D. as a ptner & the assnmt to him of the share & intt of the sd A., & for the pformce & observce of the sd agrmts & provons with such varions as afsd in the same mner as far as circes will admit as if the sd D. had origlly been a pty to the sd articles.

Costs.

6. EVERY ASSURCE or instrumt required for givg effect to this agrmt shl be prepared by & at the expse of the sd D., & the costs of the perusal & exon thof by or on behalf of the other pty or pties thto shl be borne by him or them resply. IN WITS, &c.

VIII.

DEED *of* DISSOLUTION *of* PARTNERSHIP *between* TWO PARTNERS *on the* RETIREMENT *of one, where the* BUSINESS *is to be* CONTINUED *by the other* (*a*).

Recitals. Articles of partnership.

PARTIES, A., 1; B., 2. WHAS the sd A. & B. have for some yrs past carried on the business of —— at ——, under the provons of articles of ptnp, dated, &c., whby it was proved,

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Conveyance is rarely required.

(*a*) Where articles of partnership provide that on the retirement of a partner the assets of the firm are to belong to the continuing partner, and that the retiring partner is to be paid off and indemnified against the liabilities of the firm by the continuing partner, all that is necessary is an acknowledgment by the retiring partner that he has been paid, see *post*, p. 370, form XII., and possibly a conveyance of any legal estate vested in him in trust for the partnership; where the provisions at the end of form LIII., p. 334, are inserted in the partnership deed, a conveyance of the legal estate can but rarely be required. As to the right of an outgoing partner or the estate of a deceased partner to an account of profits made in the interim, between the retirement or death and the making up of the account, see the Partnership Act, 1890, ss. 29, 42. As to the liability of a retired partner or the estate of a deceased partner to debts subsequently contracted by the firm, and as to the effect of the old firm name, or that of the retired partner, continuing to be used, see the Partnership Act, 1890, ss. 14, 36, 38; *Re Fraser*, [1892] 2 Q. B. 633; and generally as to the effect of dissolution, see ss. 17, and 32 to 44.

PREC. VIII.

Particulars of partnership assets.

Agreement for dissolution.

&c., *state any of the provons wch are material* (*a*); AND WHAS the sd ptners are possed, as pt of their ptnp ppty, of a lease of certn —— & hds at ——, wch lease is dated, &c., & made, &c., [*or*, of the sevl leasehd ppties specified in the schdle hto], & of certn fixed & moveable engines, machy, plant, stk-in-trade, & other effects, *or as the case may be*; AND WHAS it has been agrd betwn the sd A. & B. that the sd ptnp shl stand dissolved as from the —— day of ——, & a notice of such dissolon has been signed by the sd pties, to be published in the London Gazette (*b*), & it has been agrd that as from that day the sd business shl belong to & be carried on by the sd B. solely, & that the share & intt of the sd. A. in the assets & goodwill of the sd ptnp shl be assned & made over to the sd B. on his takg upon himself the whole of the debts & liabilities of the sd ptnp wch were outstandg on the sd —— day of ——, & paying to the sd A. the value of his share & intt in the sd ptnp & the assets & goodwill thof as the same stood on that day: AND WHAS an acct & valuon has been taken & made by the sd ptners of the sd business, & the assets & goodwill thof, and the value of the share & intt of the sd A. thrin, after providg for the paymt & satisfon of the debts & liabilities thof on the sd —— day of ——, has been ascertained to be the sum of £—— (*c*): NOW THIS INDRE WITNETH that in psuance of the sd agrmt in this behalf, they the sd A. & B. do hby

Account taken.

Witnesseth.

(*a*) If no articles, say, "& are intted thrin in eql shares, but such ptnp is not regulated by any articles or agrmt in writg." Where real or leasehold property is conveyed by the deed, any reference to the articles should, if possible, be avoided, in order not to bring them upon the title.

(*b*) As to the effect of notice in the Gazette, see the Partnership Act, 1890, s. 36 (2); and as to the power to compel notification, see s. 37; and before the act, *Hendry* v. *Turner*, 32 Ch. D. 355.

Variation for instalments secured by mortgage.

(*c*) If the sum due to the outgoing partner is to be paid by instalments, and security given, add, "AND WHAS it has been further agrd that the paymt of the sd sum of £—— shl be made by the sd B. to the sd A., by instalmts, with intt at —— p.c. p.a., & shl be secd by the covt of the sd B. & by a mtge of freehd & leasehd ppty of the sd B. situate at, &c. [includg the hds comprd in the respive leases hinbfe mentd], & such secy is intd to be forthwith exted." And in the second witnessing part, say, "in conson of the premes, & of the sum of £—— agrd to be pd by the sd B. to the sd A. as afsd, the paymt whof is intd to be secd in mner afsd."

declare that the sd ptnp betwn them shl be considered as determined & stand dissolved as from the sd —— day of ——, [& that the hinbfe mentd indre of ptnp, & all clauses, provons, & things thrin contd shl as from the sd —— day of —— cease and be void]: AND THIS INDRE ALSO WITNETH that in psuance of the sd agrmt, & in conson of the premes & of the sum of £—— (*d*) now pd by the sd B. to the sd A., the rect whof the sd A. doth hby acknowe, the sd A., **as benefl owner** (*e*),

Further witnesseth.

As to the stamp duty on the conveyance of the share of a deceased or outgoing partner.

(*d*) An assignment of the share of a deceased or outgoing partner is chargeable with *ad valorem* duty on the value of the share as a conveyance on sale, see Stamp Act, 1891, sched., tit. Conveyance; *Christie* v. *The Commrs.*, *&c.*, L. R. 2 Ex. 46; better reported 4 H. & C. 664; *Phillips* v. *The same*, L. R. 2 Ex. 399. It is doubtful whether it is not also liable (though the point was not taken in the above two cases) to duty on the deceased or outgoing partner's share of the partnership debts which would have to be borne by the continuing partners, and against which an indemnity is given, under the Act, s. 57 (see *Ulverstone*, *&c.*, *Ry. Co.* v. *The Commrs*, *&c.*, 2 H. & C. 855); and it is believed that it has been sometimes adjudicated to be so liable; though it may be contended that the interest of a partner in a firm is an indivisible thing, not admitting of being thus split up; and moreover considerable practical difficulty might arise in ascertaining the amount of the debts for the purpose. Where there is no legal estate to be conveyed, and no preliminary contract on which the duty has been already paid under the Act, s. 59 (see above, p. 357, note), it might be saved by dispensing with an assignment altogether and taking merely a receipt for the money according to the form in Precedent XII., *infra* (see Lindley on Partnership, p. 452), which would be sufficient in ordinary cases to extinguish all equitable claims. Where the legal estate in real or leasehold property is in a retiring or the representatives of a deceased partner, a conveyance of such legal estate will be necessary; and a conveyance may sometimes be desirable of a merely equitable interest. It has been suggested that the consideration could be apportioned under the Act, s. 58 (1), so as to leave only a nominal sum attributable to the property conveyed and escape duty on the remainder as to which a conveyance is dispensed with, but that section does not apply unless the whole of the property for which the consideration passes is actually conveyed (see Vol. I., p. 591, note); but the consideration money is apportionable in such a case, provided the apportionment is fairly made according to the actual value of the properties; and sometimes where there is no contract on which duty has been paid, the conveyance might, to save duty, be confined to any legal estate in land, sometimes the remainder of the transaction is evidenced by recitals (framed so as not to operate in law as a transfer or contract, see Vol. I., pp. 545, 591, notes, and above, p. 353, note, and see *infra*, Precedent X. and note thereto), or by an acknowledgment in the form in Precedent XII., but it appears safer not to say anything about book debts or goodwill from which a sale can be collected.

(*e*) This implies the full covenants for title as on a sale, which seems proper; but sometimes only a covenant against incumbrances and for further assurance is given, which may be added to the covenants on p. 363, and may be in the form following:—" THAT he the sd A. has not done any act whby the premes hby assned or any pt thof are, is, or may be chged or

Covenant by outgoing

Assignment of share in partnership.

doth hby assn & transfer unto the sd B., ALL the pt or share & intt whatsr of him the sd A. of & in all & singr the leasehd (*a*) hds & premes hinbfe mentd or refd to [*or*, the sevl leasehd hds & premes specified in the schdle hto], AND of & in all & singr the engines, machy (whether fixed or moveable), plant, stk-in-trade, book, & other debts, credits, contracts, assets, effects, profits, business, & goodwill (*b*) of the sd ptnp,

Habendum to continuing partner.

Power of attorney (*c*).

TO HOLD the same UNTO the sd B., absolutely; AND FOR the conson afsd & for the more effectually enablg the sd B., his exs, ads, & assns, to rece & recover & obtain the benefit of the premes hby assnd, the sd A. doth hby irrevocably appt the sd B., his exs, ads, & assns, the atty or attys of him the sd A., his exs or ads, in the jt names of the sd A. & B., or in the name or names of the sd A., his exs or ads, or orwise, as the case may require, but for the exclusive benefit & at the sole cost & risk of the sd B., his exs, ads, or assns, to demand, call in, & rece from all psons liable to pay, deliver, or acct for the same, or any pt thof, all & singr the book & other debts, credits, moys & effects of the sd ptnp, & to give effectual rects and dischges for the same resply, & to endorse & sign bills & other negotiable instrumts, & to use and adopt all such remedies, pcdgs, or means for gettg in and recoverg the sd debts, credits, moys, & effects resply, & enforcg & obtaing the benefit of any of the contracts

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partner against incumbrances.

And for further assurance.

incumbered in any mner whatsr; AND THAT he the sd A. will at all times, at the reqt and cost of the sd B., his exs, ads, or assns, exte and do all such assurces & acts for further or more effectually vestg the premes hby assned, & every pt thof in the sd B., his exs, ads, & assns, & enablg him & them to rece, recover & obtain the full benefit of the same as shl be reasbly required."

(*a*) It may sometimes be desirable to convey or assign the share of a deceased or retiring partner in any real or leasehold property by a separate deed. See Precedent XI. If the leaseholds are not assignable without the lessor's licence, a licence is necessary although only a share is assigned; see *Varley* v. *Coppard*, L. R. 7 C. P. 505.

(*b*) As to the rights of a purchaser of goodwill, see Vol. I., p. 342, note.

As to power of attorney.

(*c*) The insertion of this power is proper notwithstanding the provisions of the Judicature Act, 1873, s. 25 (6), making choses in action assignable, as it may be difficult to give notice of the assignment to all the debtors of the partnership; see above, p. 291, note. The power being for value and expressed to be irrevocable, cannot be revoked; see the C. A., 1882, s. 8, p. 30, note (*d*); and the covenant usually inserted not to revoke the power is therefore omitted.

Covenant by retiring partner that he has not contracted debts.

To ratify.

Not to release debts, &c.

Covenants by continuing partner.

To pay debts.

For indemnity (*d*).

Mutual release.

of the sd ptnp as may be deemed expedient, & for all or any of the pposes afsd from time to time to appt a substitute or substitutes, & such substiton at pleasure to revoke, & genlly to do whatsr may be requisite for givg to the sd B., his exs, ads, or assns, the full benefit of the assnmt hby made; AND THE SD A. doth hby covt with the sd B., that he the sd A. has not at any time htofore, except as appears by the books of the sd ptnp, contracted any debt or obligon wch can or may chge or affect the sd B., his exs, ads, or assns, or the assets or effects of the sd ptnp, or any pt thof, or reced or dischged any of the sd debts, credits, moys, or effects, except as afsd; AND THAT he the sd A., his exs or ads, will at all times ratify & confirm whatsr the sd B., his exs, ads, or assns, or any substitute or substitutes actg under him or them, shl do or purport to do by virtue of these psnts; AND WILL not compound, rele or become non-suited in any action or pcdg wch may be instituted or taken by the sd B., his exs, ads, or assns, by virtue of the power of atty hinbfe contd, nor do any other act by means whof the recovery of the premes hby assned, or any pt thof, may be impeached or delayed, nor interfere in or about the premes further or orwise than the sd B., his exs, ads, or assns, shl direct or require; AND THE sd B. doth hby covt with the sd A., that he the sd B. will in due course pay all the debts & dischge all the liabilities of the sd ptnp, & will at all times hrafter duly pay & pform & observe the rents & covts to be pd, pformed & observed in respt of the sd leasehd premes; AND WILL, at all times hrafter, effectually keep indemnified the sd A., his exs & ads, & his & their estes & effects, agst all such debts & liabilities, & all actions, pcdgs, costs, & expses in respt thof, & all costs & expses by reason of any action or pcdg wch may be instituted or taken by the sd B., his exs, ads, or assns, by virtue of the power or authority hinbfe contd, or of anythg relatg thto: AND

Effect of dissolution.

Stamp.

(*d*) As to the effect of the dissolution in converting the retired partner into a surety for the debts, see *Rouse* v. *Bradford Banking Co.*, [1894] 2 Ch. 32. Where the dissolution is kept secret the payment of interest by the surviving partners may prevent the debts of the firm becoming statute barred in favour of the retiring partner; *Re Tucker*, [1894] 3 Ch. 429. The covenant of indemnity does not seem to make the deed chargeable with *ad valorem* duty as a security, except for a nominal sum, as the stamp can be added to if occasion arises, without payment of a penalty, under the Act of 1891, s. 88 (2); see above, p. 361, note; and Vol. I., p. 655, note.

PREC. VIII. EACH of them the sd A. & B. doth hby rele & for ever dischge the other of them, his hrs, exs, or ads, from all actions, pcdgs, claims, & demands whatsr wch such respive releg pty, or his hrs, exs, or ads, now has or hrafter but for these psnts might have had agst the other of them, his hrs, exs, or ads, on acct of the sd ptnp, or anythg relatg thto, but so nevs that this psnt rele shl not prejudice or affect any of the covts, agrmts, or provons hrin contd or implied, or the rts or remedies of the sd respive pties, their hrs, exs, ads, or assns hrunder. IN WITS, &c.

[*Schdle of leasehds.*]

IX.

PREC. IX.

DEED *of* DISSOLUTION *on* DEATH *of* ONE *of* THREE *partners, where part of the* ASSETS *consists of* REAL *and* LEASEHOLD PROPERTY, *which is transferred by a* SEPARATE DEED (*a*), *and where the* SHARE *of the* CAPITAL *of the* DECEASED PARTNER *is to remain as a* LOAN *to the firm, payable by* INSTALMENTS, *under* a *provision in the* ARTICLES, *to be secured by Deed of* COVENANT *or* MORTGAGE.

PARTIES, A. *&* B., *exs of deced ptner*, 1; C. *&* D., *continug ptners*, 2. *Recite articles of ptnp betn C. & D., & X., settg out the provons for death of a ptner; death of X., & will apptg A. & B. exs, & probate, Vol. I., p.* 374: AND WHAS the sd ptners were at the dece of the sd X. entled as pt of their ptnp ppty to the hds specified in the first schdle hto, wch are of freehd tenure, & to the hds specified in the second schdle hto, wch are held under the respive leases in such schdle mentd, & they were also entled, &c., *State short parlars of other ppty;* AND WHAS the accts & valuons directed by the sd articles of ptnp to be taken & made on the death of any ptner have been taken & made, & it thby appears that the sum of £—— is the amt now due to the sd A. & B., as exs of the sd

Recitals.

Particulars of partnership property.

Accounts taken.

(*a*) See above, pp. 357, 361, notes, and Precedents XI. and XIV. As to *ad valorem* duty on the conveyance of the deceased partner's share, see p. 361, note; and see Precedent XII., *infra*.

X., in respt of intt & profits, & that the sum of £—— is the amt of the share of the sd X. in the capl of the sd ptnp, after dischgg the liabilities thof wch were outstandg at the death of the sd X.: AND WHAS it has been agrd [psuant to the provons contd in the sd articles] & as pt of the arrangemts conseqt on the dece of the sd X. that the sd sum of £—— shl be pd by the sd C. & D. to the sd A. & B. upon the exon of these psnts, & that the paymt of the sd sum of £—— *i.e., the share of capl of X.*, by four eql instalmts, at the expiron of six, twelve, eighteen & twenty-four calr months from the death of the sd X. togr with intt on the same sum, or the pt thof for the time being unpd, after the rate of —— p.c. p.a. from his dece, shl be secd to the sd A. & B. by the jt and sevl covt of the sd C. & D., *or* "by a mtge of the sd freehd & leasehd hds comprd in the first & second schdles hto, & the other assets & goodwill of the sd ptnp (other than psonal chattels within the meang of the Bills of Sale Act, 1878)" (*b*), wch sd covt, *or* "mtge," is intd to bear even date with & to be exted immedly after these psnts, and that the sd A. & B. shd convey to the sd C. & D. the share of the sd X. in the freehd & leasehd premes & the other assets and goodwill of the sd ptnp: AND WHAS, for the pposes of the Stamp Act (*c*), it has been agrd that the sum of £——, pt of the sd sum of £——, shl be the value of the share of the sd X. in the sd freehd and leasehd hds, & that the sum of ——, residue of the sd sum of £——, shl be the value of the share of the sd X. in the residue of the assets & goodwill of the sd ptnp: AND WHAS, in psuance of the hinbfe recited agrmt, by an indre bearg even date with but exted bfe & made betn the same pties as these psnts, *short recital of convce of freehds & leasehds by A. & B. to C. & D. in conson of the sum apportioned as the value thof*; NOW THIS INDRE, &c. *Assnmt by A. & B. to C. & D., in conson of the apportioned value thof & of the premes, of the share of X. in the goodwill & assets* "other than the sd freehd & leasehd premes," *as in last Prec., mutatis mutandis*, TO HOLD the same UNTO the sd C. & D. absolutely, accdg to the respive shares, rts, & intts of the sd C. & D. of & in the ppty of their psnt ptnp.

Agreement for payment.

Apportionment for duty.

Conveyance of realty and leaseholds.

Witnesseth.

Habendum to partners.

(*b*) As to which the charge would be void, *Coburn* v. *Collins*, 35 Ch. D. 373.

(*c*) See above, p. 361, note.

PREC. IX.

If necy add a power of atty & covt to ratify as in last Prec., with alterons required for sevl pties. Jt & sevl covts by C. & D. to pay debts, & indemnify A. & B., & este of X., as in last Prec., mutatis mutandis: AND THE sd A. & B. do & each of them doth hby rele & for ever dischge the sd C. & D., & each of them their & each of their hrs, exs, ads, & assns, & the sd C. & D. do & each of them doth hby rele & for ever dischge the sd A. & B., & their respive hrs, exs, & ads, & the este & effects of the sd X., &c., *as in last Prec., with the necy verbal alterons, the release not to affect* "the rts of the sd respive pties under any covts or provons contd in the sd respive indres of even date hwith or these psnts." IN WITS, &c.

Mutual release.

[*Schdles givg short parlars of Freehds & Leasehds.*]

X.

PREC. X.

DEED *of* RELEASE, &c., *between* EXECUTORS *of* DECEASED PARTNER *and* SURVIVING PARTNER *framed to save* STAMP DUTY (*a*).

Parties.
Recitals.

PARTIES, X. *&* Y., *exs of* A., 1; B., 2. *Recite deed of ptnp betn* A. *&* B., *givg option to a survivg ptner to pchase the share of the deced ptner on givg a certn notice accdg to the value as ascertained on takg the accts. Death of* A. *& will, &c., as in last Prec.* AND WHAS the sd B. duly notified to the sd exs his intention to continue the sd business & to pchase the share & intt of the sd A. in the sd business & premes psuant to the sd deed of ptnp & the accts & valuons directed by the sd deed of ptnp to be taken & made in that event have been duly taken &

Purchase of share.

Stamp.

(*a*) As to stamp duty, see p. 357, note, p. 361, note, Vol. I., p. 884, note. It was stated by Mr. Key, in the 4th edition of this volume, at p. 365, that a deed in this form containing neither a contract for sale (the contract being in the partnership deed), nor a conveyance, had been adjudicated to be exempt from *ad valorem* sale duty, but the editors understand that the authorities now claim *ad valorem* duty. It was considered that the acknowledgment (compare Precedent XII., *infra*) was sufficient, without an actual conveyance, as to the properties (constituting the great bulk) in which the executors of the deceased partner had only an equitable interest.

made & the total amt or value of the share & intt of the sd A. includg accrued intt & profits to the —— day of —— last was ascertained to be the sum of £——: AND WHAS the sum of £—— pt of the last-mentd sum has been pd by the sd B. to the sd exs & the paymt of the sum of £—— the balce thof by instalmts with intt is intd to be secd by a deed of covt & mtge of certn freehd & leasehd ppties of the sd late firm wch is intd to bear even date with & to be exted after these psnts & to be made betn *pties*: AND WHAS the sd late firm was entled to divers freehd & leasehd ppties some portions whof (being in mtge) were vested in the sd ptners for an equitable este or intt only & other portions were legally vested in them in jt tenancy the legal este whrin upon the dece of the sd A. survived to the sd B. & certn further portions thof were legally vested in the sd ptners as tenants in common the legal este in an undivided moiety whof passed by the will of the sd A. to the sd exs & trees thof: AND WHAS by an indre bearg even date with & exted bfe these psnts & made, &c., the share & intt of the sd A. in the sevl freehd & leasehd ppties thrin mentd (being the freehd & leasehd ppties wch were legally vested in the sd ptners as tenants in common as afsd) has been conveyed & assned by the sd exs & trees to the sd B.: AND WHAS it is considered that upon complon of the arrangemts intd to be effected by these psnts & the sd two indres of even date hwith all such equitable este or intt as was vested in the sd A. or as passed by his sd will to his sd exs & trees of & in the sd other freehd & leasehd ppties will pass to or vest in the sd B. witht any convce or assnmt: AND WHAS it has been agrd that such acknowemts & covts & mutual reles as are resply hinafter contd shl resply be entd into & exted: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the premes the sd X. & Y. do hby acknowe & declare that the deed of covt & mtge wch is intd to bear even date with & to be exted after these psnts as afsd shl be accepted by them as in full satisfon of all claims and demands agst the sd B. or orwise in respt of the share or intt of the sd A. or of them the sd X. & Y. as his exs or trees in the sd business of the sd late firm or the assets or ppties thof: AND EACH of them the sd X. & Y. as to the acts of himself & his own hrs, exs & ads only doth hby covt with the sd B., his hrs, exs, ads & assns, that they the sd covtg pties resply & their respive hrs,

Payment to be secured by mortgage.

Title to properties.

Conveyance of legal estates.

As to equitable estates.

Witnesseth.

Acknowledgment.

Covenant for further assurance.

PREC. X.

exs & ads will at any time after the sd deed of covt & mtge intd to bear even date hwith shl have been made & exted at the reqt & cost of the sd B., his hrs, exs, ads or assns exte & do such further or other convces, assnmts, assurces & other instrumts or acts for vestg the freehd & leasehd ppties or other assets of the sd late ptnp in the sd B., his hrs, exs, ads, or assns as may be reasbly required, but witht prejudice to the sd deed of covt & mtge: *Covt by* B. *to indemnify exs, &c., agst debts & rents & covts of leases & mutual releases, as in last Prec., mutatis mutandis.* IN WITS, &c.

XI.

PREC. XI.

CONVEYANCE *and* ASSIGNMENT *by a* RETIRING PARTNER *to his* TWO CO-PARTNERS *of his* SHARE *in* FREEHOLD *and* LEASHOLD PROPERTIES *and fixed* MACHINERY, *&c., which are in* MORTGAGE (*to accompany a deed of dissolution*) (*a*).

Recitals.

Title to property subject to mortgages.

PARTIES, A., *retirg ptner*, 1; B. *&* C., *continuing ptners*, 2. WHAS the sd A., B., & C. carried on the business of —— in co-ptnp up to the —— day of —— now last past, & are entld as pt of their ptnp ppty to the messes, bldgs, lands, & hds specified in the first schdle hto, wch are of freehd tenure, & to the messes, bldgs, lands, & hds specified in the second schdle hto, wch are of leasehd tenure, & are held under an indre of lease dated, &c., & made, &c., for the residue of a term of —— yrs from the —— day of —— at the yrly rent of £——, & to the fixed machy & other erons & fixtures upon the sd respive freehd & leasehd premes (subjt to the mtges & incumbces mentd in the sd schdles as affectg the sd respive freehd & leasehd premes) in the shares & proportions follg, that is to say, the sd A. to —— eql —— pts thof, & the sd B. & C. to the remaing —— eql —— pts thof: AND WHAS the sd A. has retired from the sd firm as from the sd —— day of —— now last past, & the sd B. & C. continue to carry on the

Retirement.

(*a*) See note (*a*), p. 360, & Precedent IX.; and as to stamp duty, see p. 361, note.

sd business of —— in co-ptnp togr:

Account settled.

AND WHAS the sd B. & C. have come to a settlemt with the sd A. in respt of his share & intt in the sd ptnp, & the assets & effects thof, & it has been agrd that they shd pay to the sd A. the sum of £—— in full satisfon of such share and intt:

Apportionment for duty.

AND WHAS for the pposes of the Stamp Act the sum of £——, pt of the sd sum of £——, has been apportioned as the estimated value of the share of the sd A. in the sd freehd & leasehd premes, & the fixed machy & other erons & fixtures thron, valued as free from incumbces:

Agreement for conveyance.

AND WHAS it has been agrd that the share & intt of the sd A. in the sd last-mentd premes shd be conveyed & assned to the sd B. & C. in mner hinafter mentd:

Witnesseth.

NOW THIS INDRE WITNETH that in psuance of such agrmt, & in conson of the sum of £—— to the sd A. pd by the sd B. & C. out of moys belongg to their sd new ptnp, *rect*, he the sd A., **as benefl owner**, doth hby grt, assn, & rele unto the sd B. & C.,

Grant and assignment of shares.

ALL THOSE —— eql undivided —— pts or shares, & all other if any the pts, shares, or intts of the sd A. of & in the freehd & leasehd messes, bldgs, lands, hds, & premes specified in the sd first & second schdles hto, & of & in all the fixed machy & other erons & fixtures in or upon the same respive premes:

Habendum

TO HOLD the same freehd premes UNTO & TO THE USE of the sd B. & C., their hrs & assns as jt tenants & TO HOLD the same leasehd premes for the residue of the sd term of —— yrs, & subjt to the paymt of the sd rent, & the pformce & observce of the covts by the lessee & condons of the sd indre of lease; & as to the entirety of the sd premes in trust for the sd B. & C., their hrs, exors, ads & assns, as pt of their co-ptnp estate. *Continue power of sale, &c., & power to appoint new trustees as at Vol. I.*, p. 405, *form* XIX.; *Jt & sevl covt by B. & C. to indemnify A. agst rent & covts of lease & mtge debts, see Vol. I., pp.* 427 *to* 429. IN WITS, &c.

to continuing partners.

[*Two Schdles.*]

XII.

PREC. XII.

ACKNOWLEDGMENT *by a retiring partner or the* REPRESENTATIVE *of a* DECEASED *partner of* SATISFACTION *of his claims against the firm* (*a*).

To B. & C., *continug ptners*, both of, &c., carryg on business as —— in co-ptnp togr at —— under the firm of ——.

I, A., of, &c. [sole exor & tree under the will of X., late of —— deced] do hby acknowe & declare that I have this day reced from the sd B. & C., the sum of £—— being the full amt of all moys due or owing to me [*or*, to the este of the sd X., or to me as exor or tree under his will] in respt of my share or intt [the share or intt of the sd X. deced] as a ptner in the sd business of —— as carried on by me [him] up to the —— day of —— [*or*, up to his dece] at —— afsd in ptnp with the sd B. & C. under a ptnp deed dated, &c. As wits my hand this —— day of ——.

XIII.

PREC. XIII.

BOND *of* INDEMNITY *against partnership* DEBTS *on Dissolution* (*b*).

Recitals.

Partnership.

Jt & sevl bond from A. & B. to C., Vol. I., p. 210. WHAS the sd A., B., & C. have carried on the business of, &c., under the firm of ——, at —— afsd, from the —— day of ——:

Dissolution.

AND WHAS by an indre bearg even date with these psnts, & made, &c., it has been agrd that the sd ptnp shl be considered as determined, & dissolved from the —— day of ——, & by the same indre (among other things) the sd C. has assned & reled unto the sd A. & B., their exs & assns, all the este & intt of him the sd C. in the sd ptnp business, & the moys, debts, ppty, & effects belongg or due to the sd A., B., & C., as ptners, or in respt of the sd ptnp:

Agreement.

AND WHAS it was pt of the arrangemt

(*a*) See p. 361, note. This instrument, if under hand, only requires a penny stamp.

(*b*) Though common, a bond has generally no advantage over a deed of covenant; see Vol. I., p. 209, note. As to the stamp, see p. 363, note.

PREC. XIII.

Condition.

for the dissolon of the sd ptnp that the sd A. & B. shd exte & give to the sd C. the above-written bond with such condon for makg void the same as is hinafter contd : NOW THE CONDON of the above written bond is such that if the sd A. & B. or one of them, their, or one of their hrs, exs, or ads, shl pay all & every the bills & notes of the sd ptnp, & all & every other the debt & debts & moys due or growg due from the sd A., B., & C., or any or eir of them in respt of the sd ptnp, & dischge all the liabilities & pform all the engagemts of the sd ptnp to wch the sd A., B., & C., or their respive hrs, exs, or ads, or any of them are, is, or shl be liable, & shl keep indemnified the sd C., his hrs, exs, ads, este & effects agst all actions, pcdgs, losses, damages, costs, & expses for or by reason of the non-paymt, non-dischge, or non-pformce of any of the sd bills, notes, debts, moys, liabilities, or engagemts, or of any act or thing in anywise relatg thto, Then the above-written bond shl be void, orwise the same shl remain in full force & effect.

Signed, sealed, &c.

XIV.

PREC. XIV.

DEED *of* COVENANT *by* CONTINUING PARTNERS *to secure the* CAPITAL *of a* DECEASED PARTNER, *which, pursuant to the articles of partnership, is to remain as a* LOAN *during the partnership term, the* INTEREST *being dependent on the rate of* PROFITS (*c*).

Recitals.

Articles of partnership.

PARTIES, A., B., & C., *continug ptners*, 1 ; D. & E., *exs of deced ptner*, 2. WHAS the sd A., B., & C. are carryg on the

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As to Partnership Act, 1890.

(*c*) See Vol. I., p. 22. The payment of the deceased partner's share is often made by instalments, secured by a mortgage of the business premises. In that case such of the recitals in the text as may be appropriate will be inserted, with the addition of recitals of the title of the firm to the freehold or leasehold property to be comprised in the security, and the deed, or deeds, by which the share of the deceased partner therein has been assigned to the continuing partners. The operative part of the deed will be in the usual form of a mortgage to secure the payment of money by instalments. See "MORTGAGES." It was decided under Bovill's Act (and the same would presumably hold under the late Act), that the rights of a mortgagee, where the interest varies with the profits, under his mortgage, were not affected by the Act ; *Ex parte Sheil*, 4 Ch. D. 789 ; *Badeley* v. *The Consolidated Bank*, 38 Ch. D. 238.

PREC. XIV. business of —— in ptnp togr in continuon of the business lately carried on by the sd A., B., C., & K., *deced ptner*, under the style or firm of A. & Co, subjt to the stipulons contd in an indre, &c., whby it was among other things provd, *continue recital of articles of ptnp statg the clauses follg, duron of ptnp, death of one ptner not to dissolve firm, annl genl acct, provon for death of ptner where his capl is to remain as a loan durg the term: Death of K., & will apptg D. & E. exs & probate, Vol. 1.*, p. 374: AND WHAS at the death of the sd K. his share in the capl of the sd ptnp, as appearg by the genl acct taken by the ptners on the —— day of —— precedg his death, amted to £——: AND WHAS all moys wch were due or owing to the sd D. & E., as exs of the sd K., in respt of profits or intt in his capl up to his dece have been pd & satisfied, as the sd D. & E. do hby acknowe: AND WHAS in psuance of the sd indre of, &c., the sd D. & E. have agrd with the sd A., B., & C., to leave the sd sum of £——, *share of capl,* as a loan to the sd firm of A. & Co., durg the residue of the sd term of —— yrs upon havg the repaymt of the same with such intt as is hinafter mentd secd in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the sd sum of £—— being left by the sd D. & E. as a loan to the sd firm of A. & Co., *jt & sevl covt by A., B., & C., with,* D. & E., that the sd firm of A. & Co. will pay to the sd D. & E., or other the legal psonal repves or repve for the time being of the sd K., their or his assns, the sum of £ —— on the —— day of ——, *i.e., end of ptnp term,* AND WILL in the meantime pay to them or him intt on the sd sum of £—— at the rate of —— p.c. p.a. by qtrly paymts on the usual qtr-days, & a further sum by way of addonal intt for each yr, durg wch the sd firm of A. & Co. shl make any profits, eql to one eql —— pt of such profits as appearg by the annl genl acct, such further sum to be pd immedly after the signature of such acct, but so that the sum (if any) payable by way of addonal intt as last afsd upon the takg of the next annl acct shl be an apportioned pt calculated from the dece of the sd A. of the sum representg such share of profits as afsd for the whole of the now current yr: AND THAT it shl be lful for the sd D. & E., or other the legal psonal repves or repve of the sd K., their or his assns, to join in takg every annl genl acct of the sd firm durg the sd term, & at all

Share of deceased partner.

Profits of deceased partner paid out.

Agreement for loan.

Witnesseth.

Covenant to pay principal.

And interest.

Power to join in taking accounts.

reasble times to have access to & examine & take copies of or extracts from the books & accts of the sd firm, [*or in lieu of last clause,* PROVD ALWAYS that the sd D. & E., or other, &c., *as above,* shl not be entled to join in takg the annl genl acct of the sd firm, or to inspect the books or accts of the sd firm, but the accts of the sd business shl be made up by or under the diron of the ptners for the time being or one of them every yr on the —— day of ——, or as soon after each such day as may be, & a pper acct & balce-sheet shl be forthwith made out & furnished to the sd D. & E., or other, &c., *as above,* & shl if required by them or him be verified by the statutory declaron of one of the sd ptners, or some pson who shl have been employed in makg up the accts, & such acct & balce-sheet when so verified shl be conclusive and bindg upon the sd D. & E. or other, &c.]: PROVD ALWAYS & it is hby agreed that if at any time durg the residue of the sd term of —— yrs the business of the sd ptnp shl be carried on orwise than strictly in accordce with the provons & stipulons contd in the sd indre of, &c., *the articles of ptnp* (*a*), or if the sd firm of A. & Co. shl at any time fail to pform & observe the covts & stipulons hrin contd & on their pt to be pformed & observed [or if the net profits made in any one yr by the firm of A. & Co., as appearg by the annl genl acct after paymt of intt on capl, & the fixed intt hinbfe covted to be pd on the sd sum of £——, shl not amt to the sum of £——], then, & in eir of such cases it shl be lful for the sd D. & E., or other, &c., their or his assns, by notice in writg addressed to the firm of A. & Co., & left at the countg-house of the sd ptnp, to elect that the provons hinbfe contd as to paymt of the sd sum of £—— & intt shall cease to operate, & thereupon the sd sum of £——, or the unpd pt thof, togr with the intt, if any, at the rate of £—— p.c. p.a. wch shl have accrued but not have been pd thron, & unless such notice shl be given on the —— day of —— *the day for takg the annl genl acct,* a further sum, instead of such share of profits as afsd by way of addonal intt at the rate of £—— p.c. p.a., to be calculated from the then last —— day of —— up to

Variation where executors are not to join in taking accounts.

Proviso for calling in loan in certain events.

(*a*) Sometimes the surviving partners are made to covenant that the business of the partnership shall be carried on during the residue of the term, in accordance with the provisions of the articles; but the clause in the text is preferable.

the day when such notice shl be given, shl as one aggregate debt, with intt thron at the rate of —— p.c. p.a. as from the date of such notice being given until paymt, be pd on demand by the sd firm of A. & Co. to the sd D. & E., or other, &c., *as above.* PROVD ALWAYS, & it is hby agrd & decld that nothg hrin contd shl constitute the sd D. & E. ptners in the sd firm of A. & Co.; PROVD ALSO that these psnts & the secy hby created shl not be affected by any change in the psons constitutg the sd firm of A. & Co. eir by the death [or retiremt] of any ptner [or the admission of any new ptner]; *Add, if desired, a covt by A., B., & C. to indemnify the estate of K. agst the liabilities of the firm,* p. 363. IN WITS, &c.

Executors not to be partners.

Security not to be affected by change in firm.

PATENTS (*a*).

CLAUSES IN ASSIGNMENTS AND LICENCES.

Recital of application for patent since 1883.

I. Whas the sd A., *patentee,* on the —— day of —— made an applon for a patent for "improvemts in the manufacture of ——," *or other short description,* accompanied by a provonal specificon [but has not yet left a complete specificon at the patent office] *or* ["& on the —— day of —— left a complete specificon at the patent office, but the same has not yet been accepted"] *or* "accompanied by a complete specificon, but the same has not yet been accepted."

Do. and acceptance of complete specification.

II. Whas, &c., *as in last form, as the case may be,* & the sd complete specificon has been accepted, but lres patent have not yet been grted to the sd A. in respt thof.

Recital of grant of letters patent since 1883 (*b*).

III. Whas by lres patent under the seal of the Patent Office sealed as of the —— day of —— the especial licence, full power, sole privilege & authority of makg, usg, exercisg, & vendg by himself, his agents or licensees, an invention for "Improvemts in ——" in the United Kingdom of Great Britain & Ireland, & Isle of Man, were grted to the sd A., *patentee,* for the term of fourteen yrs from the date of such lres patent, subjt to provos for avoidg such lres patent in certn

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Law of patents.

(*a*) As to the present law of patents, see the Patents, Designs and Trade Marks Acts, 1883 to 1888, 46 & 47 Vict. c. 57 (by which the prior Acts were repealed); 48 & 49 Vict. c. 63; 49 & 50 Vict. c. 37; 51 & 52 Vict. c. 50. By s. 12 of the Act of 1883, patents are to be sealed with the Seal of the Patent Office instead of the Great Seal. For the rules in proceedings before the Judicial Committee of the Privy Council under the Patents, Designs and Trade Marks Act, 1883, s. 25, see the W. N., 1897 (Dec. 11), p. 343. See further as to the law, Johnson, The Patentee's Manual; Lawson on the Patent Acts Goodeve, P. P., p. 220.

(*b*) This form is adapted to Patents granted after 1883, following the form of letters patent contained in the first schedule to the Act of 1883; which, however, is only optional (s. 33). For a recital of grant of letter patent before 1884, see previous editions of this book.

events thrin mentd, includg the non-paymt by the sd A., *patentee,* of all fees by law required in respt thof.

Title to patent by assignment.

IV. WHAS the sd A. is entled, by assnmt [so far as regards the coy of —— (*a*)] dated, &c., & duly registered, to lres patent "under the seal of the Patent Office," dated, &c., & origlly grted to B. for "Improvemts in, &c."

Short recital of title to patent.

V. WHAS the sd A. is the inventor & patentee of an invention for "Improvemts in, &c.," the lres patent for wch bear date, &c.

Recital of foreign patent.

VI. WHAS the sd A. is entled to the sole & exclusive licence, &c., *as in recital of grt of lres patent* [in the Republic of France, wch was grted to him by a *brevet d'invention,* dated, &c., & wch will expire on, &c.] (*b*).

Assignment of patent, absolute, or by way of mortgage.

VII. NOW THIS INDRE WITNETH that in psuance of the recited agrmt, & in conson of the sum of £—— now pd by the assnee to the patentee (the rect whof is hby acknowed) [& of the royalties & paymts hinafter reserved & made payable, & the covts & agrmts on the pt of the assnee hinafter contd], the patentee, **as benefl owner** (*c*), doth hby assn & transfer unto the assnee ALL THAT the sd invention of improvemts in ——, & the sd lres patent for the same, & the full & exclusive benefit thof, [& of any & every improvemt, extension, or renewal thof, & the rt to apply for & obtain an extension or renewal thof,] & all rts, powers, & benefits to the sd invention, lres patent, & premes belongg, TO HOLD the same UNTO the assnee for the residue of the sd term of fourteen yrs grted by the sd lres patent [& any further term to be grted by any extension or renewal of the same] [subjt to the paymt of the royalties & moys hinafter reserved & made payable, & to the pformce & observce of the covts & agrmts on the pt of the assnee, & condons hinafter contd] [*for a mtge say,* subjt to the provo hinafter contd for the redmon of the same premes].

Grant of licence.

VIII. THE PATENTEE (*d*) doth hby grt unto the licensee [the

(*a*) See 46 & 47 Vict. c. 57, s. 36.

(*b*) See, as to foreign and colonial patents, Johnson, the Patentee's Manual, Appendix.

(*c*) This implies the usual covenants for title on a sale or mortgage, but not a covenant for the validity of the patent.

(*d*) Covenants for title cannot, it is conceived, be implied by making the patentee grant **as benefl owner** under the C. A., 1881, s. 7, since a licence, even though exclusive, seems not to be a "conveyance" within the Act, s. 2;

sole, full, & exclusive] licence to use & exercise the sd invention durg the term of —— yrs from the date of this licence, [*or*, the unexpired residue of the term of the sd lres patent, or any renewal or extension thof,] & to sell & dispose of all —— manufactured accdg to the sd invention, when & as the licensee shl think fit for his absolute use & benefit.

The same. Various restrictions.

IX. THE PATENTEE (*d*) doth hby grt unto the licensee full [& exclusive] licence to use & exercise the sd invention [to the extent of —— & with refce to —— only] [for the ppose of manufacturg —— only] [at any place or places within a radius of —— miles from ——, but not elsewhere] [in England only] durg the term of —— yrs from the —— day of ——, & to sell & dispose of all —— manufactured [within the limits afsd, *or*, "in England" only (*e*)] accdg to the sd invention, at any time durg the sd term [or within six calr months from the expiron thof].

Covenant to pay royalties. Variations where there is a fixed minimum rent (*f*)

X. THE LICENSEE shl pay to the patentee [yrly durg the sd term, & so in proportion for any less time than a yr, the sum of £——, as a fixed or minimum annl rent, by eql qtrly paymts, on the —— day of ——, &c., the first of such paymts to be made on the —— day of —— next, in respt of wch sd annl sum of £—— the licensee may manufacture or make [& sell] —— [cwt. of] —— accdg to the sd patent, & shl also pay to the patentee] for every —— [cwt.] [in excess of —— [cwt.]] of —— manufactured or made [& sold] by the licensee accdg to the sd invention, in every half-yr of the sd term, commencg on the —— day of —— & —— day of —— [whether the same shl have been sold or not] the royalty or sum of £——, to become due & be pd at the end of two calr months after the expiron of the half-yr durg wch the same [such excess] shl have been manufactured or made [sold].

Licensee to keep

XI. THE LICENSEE shl at all times durg the continuce of

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see per Lindley, L.J., *Guyot* v. *Thomson*, [1894] 3 Ch., at p. 398. It is better, if so intended, to insert express covenants, see *infra*, p. 382, form XXXI.

(*d*) See note (*d*), p. 376.

(*e*) A licence to manufacture within certain limits does not imply a right to sell outside those limits, *Société, &c., de Glaces* v. *Tilghman's, &c., Co.*, 25 Ch. D. 1.

(*f*) It is important to remember that an assignment of a patent, or a licence, imposes no obligation on the assignee or licensee to work the patent. *Re Railway, &c., Appliances Co.*, 38 Ch. D. 597.

accounts, and permit inspection.

this licence keep accurate & regular accts in septe books containg full entries & parlars of all —— manufactured or made by him under this licence [& of the sales thof], & of all parlars in relon thto, wch may be material for the ppose of showg the amt payable to the patentee by way of royalty as afsd: And the sd books of acct, & all other documts in the posson of the licensee relatg to the sd invention, manufacture, & premes, shl be kept at the place of business of the licensee, & shl at any time, if required, be produced for the inspon of the patentee, or any pson appted by him, who shl be at liberty to make copies of or extracts from any of the accts or mres thrin contd.

To furnish half-yearly account, and verify same.

XII. THE LICENSEE shl within ten days after the expiron of such every half-yr furnish to the patentee or his agent a full acct & statemt in writg of all —— manufactured or made as afsd during the precedg half-yr, & every such statemt, & also any of the entries in the books of acct to be kept as afsd, shl, if required by the patentee or his agent, be verified by the statutory declon of the licensee, or some pson or psons in his employmt who shl be approved of for that ppose by the patentee.

To affix labels.

XIII. THE LICENSEE shl affix upon every article [box or packet containg articles] made or manufactured by him under this licence in a conspicuous mner a label or plate containg the inscription "A.'s patent, 18—," such labels or plates to be supplied by the patentee, & shl not sell any articles so made or manufactured witht such a label or plate.

The same to machines.

XIV. ALL MACHINES to be used by the sd licensee under this licence shl have a plate containg the inscription, "A.'s patent, 18—," affixed to the same on some conspicuous pt thof, to be prescribed by the patentee for that ppose (such plates to be furnished by the patentee): And no such plate shl be removed from any machine to any other witht his previous consent, & no machine shl be considered as duly licensed or authorised to be used unless such plate be affixed thto.

Power to patentee to inspect factories.

XV. THE PATENTEE shl be at liberty at any time durg the continuce of this licence to enter upon any factory or place of business of the licensee in wch the manufacture of —— shl be carried on at any reasble hour in the daytime to inspect the same, & the works thof, & all —— manufactured, or in course of manufacture, in such factory or place.

Licensee not to use invention otherwise than according to licence.

XVI. THE LICENSEE shl not, eir directly or indirectly & eir by himself or any agent or agents, use or exercise the sd invention orwise than in accordce with these psnts.

Patentee to give licensee or assignee assistance.

XVII. THE PATENTEE shl, whenever required, give to the licensee [assnee] such assistce & informon resptg the sd invention & the mode of workg & usg the same, & all processes connected thwith as may be necy for enablg him to use & exercise the sd invention to the best advantage.

Patentee to communicate further improvements to licensee or assignee.

XVIII. IF AT any time or times hrafter durg the continuce of this licence the patentee shl invent, discover, or make any improvemt or improvemts in the sd invention, or the mode of workg or usg the same, or wch may be applied to the sd manufacture, or shl become the owner of any such improvemt or improvemts (whether patented or not), then & in every such case he shl communicate such improvemt or improvemts to the licensee, *or*, "assnee," & give him full & sufft informon, instrons, & assistce respectg the mode of workg & usg the same, & so far as practicable render the same available at the expse of the licensee, *or*, "assnee," for his benefit [within the limits afsd,] & the licensee, *or*, "assnee," shl be entled to use & exercise the same witht payg any further or other royalty, prem, or compenson to the patentee in respt thof, [& the patentee shl forthwith communicate a full and perfect descron of such improvemt or improvemts to the licensee, *or* "assnee," & do every act wch may be necy or convenient for enablg him to obtain lres patent for vestg the exclusive rt thto in him or such other pson or psons as he may appt].

Provision as to infringements (*a*).

XIX. IN CASE the sd lres patent or any extension or renewal thof shl be infringed, the patentee, *or*, "licensee," shl forthwith, after notice of such infringemt, at his own cost, take all necy pcdgs for effectually protectg & defendg the same, & in default of his so doing the licensee, *or*, "patentee," shl be at liberty by notice in writg, given to or left at the usual or last known place of business or residce of the patentee, *or*, "licensee," to determine this agrmt.

The same.

XX. IN CASE the sd lres patent [or any extension or renewal

(*a*) See *infra*, p. 391, note (*b*). As to the power of a mortgagor to sue an infringer without making the mortgagee a party co-plaintiff or defendant, see *Van Gelder, &c.*, v. *Sowerby, &c., Society*, 44 Ch. D. 374.

thof] shl be infringed, it shl be lful for the licensee, at his own cost, but in the name of the patentee, to take all necy legal pcdgs for effectually protectg & defendg the same.

The same.

XXI. THE PATENTEE shl at all times durg the continuce of this licence at his own costs & chges by all means in his power protect & defend the sd lres patent from all infringemts, whether within or outside the limits afsd, by any pson or psons whomsr, & in default of his so doing, the rent & royalties hby reserved shl cease to be payable, but this licence shl nevs remain in full force, & in case of the sd rent & royalties so ceasg, such cessation shl be taken as a satisfon of the covt by the patentee for such proton as last afsd, or any liability of the patentee in respt thof.

Licensee not to dispute validity of patent.

XXII. THE LICENSEE shl not at any time or times hrafter dispute the validity of the sd patent.

Licensee not to assign or grant sub-licences.

XXIII. THE LICENSEE shl not assn or transfer this licence or any pt thof, to any pson or psons other than any future ptner or ptners in his firm or his succors in business, or grt any sub-licence to any pson or psons whomsr [witht the consent in writg of the patentee].

Patentee not to use invention or grant other licences.

XXIV. THE PATENTEE shl not at any time durg the continuce of this licence use or exercise the sd invention, or any such future improvemt or improvemts as afsd, or grt any licence to any other pson or psons whomsr to use or exercise the same or any such improvemt or improvemts [or to use any machine or machines comprisg the same] [within the limits afsd] [for the ppose of manufacturg ——] [witht the consent in writg of the licensee].

Power to either party to determine licence.

XXV. PROVD ALWAYS, & it is hby agrd & decld, that this licence may be determined at any time after the first six calr months by the patentee, or by the licensee, on givg to the other of them or leavg at his usual or last-known place of business or abode, three calr months' previous notice in writg of his intention so to do, & at the expiron of such notice these psnts, & all the covts, agrmts, & provons hrin contd shl cease & be void, but witht prejudice to the remedies of eir pty for the recovery of any moys then due to him hrunder.

Power to determine licence on non-pay-

XXVI. PROVD ALWAYS, & it is hby agrd & decld, that if the [rent], royalties, or sums hby made payable, or any pt thof, shl at any time be in arrear or unpd for twenty-one days after the ment of royalties, &c. (*a*).

same shl have become due (whether any legal or formal demand thof shl have been made or not), or if the licensee shl become bkpt or enter into any arrangemt or composon with his credors, or shl make default in pformg or observg any of the covts, agrmts, or condons hinbfe contd, & on his pt to be pformed or observed, then & in any such case it shl be lful for the patentee, by notice in writg given to the licensee, or left for him at his usual or last-known place of abode or business, to revoke this licence, wch shl thrupon become void witht prejudice to any rt of action or remedy of the patentee for the recovery of any moys then due to him hrunder, or in respt of any antecedent breach of any of the covts or agrmts of the licensee hinbfe contd.

Power to patentee to determine licence if not worked (*b*).

XXVII. IF THE LICENSEE shl discontinue the manufacture of ——, accdg to the sd invention, or shl not manufacture [& sell] at least ——, accdg to the sd invention, in any one yr commencg on the —— day of ——, the patentee shl be at liberty by notice in writg given to the licensee or his sd succor, or left at his usual or last-known place of abode or business, to determine this licence, in wch case the same shl cease & become void, but witht prejudice, &c., *as in last form.*

Power to patentee to determine licence if it shall become vested in more than one person.

XXVIII. PROVD ALWAYS, that if the licence hby grted, or the benefit thof, shl at any time durg the sd term become vested in more than one pson [other than psons tradg & usg the sd licence togr as co-ptners] it shl be lful for the patentee, by notice left at the place of business or the usual or last-known place of abode of any of such psons, to revoke this licence, in wch case the same shl cease & become void, but witht prejudice, &c., *as in form* XXVI.

Proviso determining licence on death of licensee.

XXIX. PROVD ALWAYS, that if the licensee shl die durg the sd term then this licence shl become void, but witht prejudice, &c., *as in form* XXVI.

Provision as to fees.

XXX. PROVD ALWAYS, & it is hby agrd, that nothg hrin contd shl render it incumbent on the patentee to pay the fees payable for keepg up the sd patent; but in the event of the same becomg void by non-paymt of such fees, this licence &

(*a*) As to the importance of this clause, see *Guyot* v. *Thomson*, [1894] 3 Ch. 388.

(*b*) As to the necessity for this, see p. 377, note (*f*).

everythg hrin contd shl likewise become void, but witht prejudice, &c., *as in form* XXVI.

Covenants for title in assignment or licence (*a*).

XXXI. AND THE PATENTEE hby covts with the assnee [licensee] that, notwg anythg by the patentee done, omitted, or knowgly suffered [the sd lres patent are now valid & subsistg, & that] the patentee now has power to assn [grt a licence to use] the sd lres patent in mner afsd, & that the same shl be held, used, & enjoyed by the assnee [licensee] witht any interruption or disturbce, free from incumbces. AND THAT the patentee, & every pson claimg under or in trust for him, will at all times, at the cost of the assnee [licensee], exte & do all such assurces & accts for further assurg the sd lres patent & premes to the assnee for the residue of the sd term [for confirmg the licences hby grted], as by him may be reasbly required.

Covenants for title in mortgage (*a*).

XXXII. AND THE MTGOR hby covts with the mtgee that [the sd lres patent are valid & subsistg, & that] the mtgor now has power to assn the sd lres patent & premes unto the mtgee in mner afsd free from all incumbces; AND THAT the mtgor & every other pson claimg any intt in the sd lres patent & premes will at all times, at the cost until foreclosure or sale of the mtgor, & aftwrds of the pson or psons requirg the same, exte & do all such assurces & accts for further assurg the sd premes to the mtgee for the residue of the sd term, or any renewal or extension thof, & enablg him to obtain the full benefit thof as may be reasbly required.

Reservation to patentee of right to grant other licences.

XXXIII. NOTHING HRIN contd shl, except as hrin exprly provd, affect the rt of the patentee to grt licences to any other pson or psons to use or exercise the sd invention for the [pposes of manufacturg —— or orwise] [at any place or places outside the limits afsd.] [Provd that no such licences shl be grted on terms more favourable or advantageous to the licensee or licensees than these psnts].

(*a*) As to implying covenants for title, see p. 376, notes (*c*) and (*d*). If there be any doubt as to the validity of the patent, the covenant that it is valid will, if so intended, be omitted, and the following proviso added at the end of the deed: PROVD ALWAYS, & it is hby agrd, that these psnts shl not be construed as a warranty by the patentee of the novelty or utility of the sd invention, or the validity of the sd lres patent."

Clause against warranty of patent

XXXIV. THAT THE PATENTEE *or*, "mtgor," will not at any time durg the sd term seek leave to amend his specificon whether by way of disclaimer or orwise [or apply for any extension or renewal of the sd lres patent] witht the consent in writg of the licensee, *or*, "mtgee."

Covenant by patentee not to apply for amendment (*b*).

XXXV. THAT THE MTGOR will pay all fees wch may become payable in respt of the sd lres patent [or any renewal or extension of the same] on the first day on wch the same resply shl become payable.

Covenant by mortgagor to pay fees.

XXXVI. AND IT IS HBY AGRD & decld that in case any dispute or question shl arise betn the pties hto or their respive repves or assns with respt to their respive rts or liabilities or orwise under these psnts, the same shl be refd to the decision of two referees or their umpire psuant to the Arbitron Act, 1889.

Arbitration clause.

XXXVII. IN THE constron of these psnts the expression "the patentee" shl, whenever the context so admits, be deemed to include the sd A., his exs, ads, & assns; & the expression "the assnee," *or*, "licensee," shl, whenever the context so admits, be deemed to include the sd B., his exs & ads [& "assns," *or*, "permitted assns"].

Interpretation clause (*c*).

PRECEDENTS.

I.

ASSIGNMENT *of* LETTERS PATENT (*d*).

PREC. I.

PARTIES, A., *patentee*, hinafter called "the patentee," wch expression shl include his exs, ads, & assns, where the context

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(*b*) See ss. 18, 19, and 25 of 46 & 47 Vict. c. 57. Such application must be made by the "patentee," who, by s. 46, is "the person for the time being entitled to the benefit of a patent;" so that in the case of an absolute assignment the provision will not be necessary.

(*c*) It is usually more convenient to place the interpretation clause at the beginning of the instrument. See Precedent I.

(*d*) This should be registered under 46 & 47 Vict. c. 57, s. 23. See also s. 87, and the Patents Rules, 1890, rr. 67 *et seq*. As to the registration of an informal document not under seal amounting to an equitable assignment, see *Re Casey*, PREC. I. so admits, 1; *assnee,* hinafter called "the assnee," wch expression, *&c., as above,* 2; *Recite title to patent,* pp. 375 *or* 376: AND WHAS the patentee has agrd with the assnee for the sale to him of the sd lres patent & the exclusive & absolute benefit thof, for the sum of £——: NOW THIS INDRE WITNETH, &c., *assnmt of patent,* p. 376, [*covts for title,* p. 382]. IN WITS, &c.

II.

PREC. II.

ASSIGNMENT *of* RIGHT *of an* INVENTOR *to* PATENT *the* INVENTION *in* FOREIGN COUNTRIES. VARIATIONS, *where the* ASSIGNMENT *extends to subsequent* IMPROVEMENTS *patented.*

PARTIES, A., *inventor,* hinafter called "the patentee," wch expression shl include his exs, ads, & assns, where the context so requires or admits, 1; B., *assnee,* hinafter called "the assnee," wch expression, &c., *as above,* 2; *Recite grt of lres patent in the United Kingdom,* pp. 375 *or* 376: AND WHAS it has been agrd betn the pties hto that the assnee shl have the rt of procurg patents or other like privileges for usg the sd invention in the countries of, &c., or in such of them or such pts thof resply as he shl think fit, upon the terms & in the mner hinafter expd & that the sole rt of obtaing such patents or privileges & all the rts & intt of the patentee to & in the sd invention & the use thof in the sevl countries afsd, shl accdly be assned to the assnee in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance, &c., *conson, rect,* & in conson of the covts & agrmts on the pt of the assnee hinafter contd, the patentee, **as benefl owner** (*a*), doth hby grt & assn unto the assnee, THE FULL & exclusive rt in

Recitals.

Agreement.

Witnesseth.

Assignment of

[1892] 1 Ch. 104; as to the right of an assignee to an account of profits from a licensee, see *Bergmann* v. *Macmillan,* 17 Ch. D. 423; as to the liability of an assignee with notice under covenants with the original patentee contained in an intermediate assignment, see *Werdermann* v. *Société Générale d'Electricité,* 19 Ch. D. 246. Registration with notice of a prior equitable title gives no priority; *New Ixion Tyre, &c.* v. *Spilsbury,* [1898] 2 Ch. 484.

(*a*) See p. 376, note (*c*).

the name & as the atty of the patentee, or orwise, as the case may require, but at the cost of the assnee, to apply for & obtain patents or other like grts or instrumts for vestg in the assnee, or in such other pson or psons as he shl think fit, the sole & exclusive rt & privilege of makg, usg, exercisg, & vendg the sd invention in the sd sevl countries of, &c. resply, or any of them or any pt thof resply, AND ALSO all the rt & power of the patentee as such inventor as afsd or orwise, to work, use, exercise, & vend the sd invention & every pt thof in the sd sevl countries resply, & every pt thof resply, To HOLD the same UNTO the assnee for his absolute use & benefit: AND EACH of them the patentee & assnee so far as the covts & agrmts hinafter contd are or ought to be pformed or observed by him & psons claimg under him doth hby covt with the other of them, in mner follg (that is to say):—

right to obtain patents abroad.

Habendum to assignee.

Mutual covenants.

1. THE PATENTEE shl forthwith furnish to the assnee a true & correct copy of the specificon of the sd invention as filed or about to be filed, & also shl forthwith enable the assnee to prepare a full & perfect descripon of the sd invention & the mode of workg the same, so as to enable him to obtain good & valid patents, grts, or instrumts, vestg in him the exclusive rt & privilege of makg, usg, & exercisg the sd invention & every pt thof, in the sd sevl countries of —— or any of them.

Patentee to furnish specification.

[2. *Patentee to communicate further improvemts to assnee,* p. 379, *mutatis mutandis, saying,* "do every act wch may be necy or convenient for enablg him to obtain the rts & privileges afsd in the sd sevl countries, & to procure patents, grts, or other instrumts in such respive countries, or any pt thof resply, for vestg the exclusive rt thto in him, or in such other pson or psons as he may appt for his absolute benefit."]

Patentee to communicate improvements.

3. IN CASE any such patent, grt, or instrumt as afsd, for securg the rts & privileges afsd in any of the sd countries, shl be grted or made to or in favour of the patentee, then & in every such case he shl forthwith or at any time thrafter upon the reqt & at the cost of the assnee, transfer such patent, grt, or instrumt, & all the benefit thof, unto the assnee, or as he may direct, & in the meantime shl stand possed thof in trust for him.

Patentee to assign foreign patents to assignee.

PREC. II.

Patentee to assist in obtaining foreign patents.

4. THE PATENTEE shl also at any time, upon the reqt & at the cost of the assnee, exte & do every instrumt, act, & thing, wch may be necy or convenient for the ppose of enablg him to obtain every or any such patent, grt, or instrumt as afsd, & the full benefit of all the rts, privileges, & premes hinbfe assned or transferred to him, or agrd so to be.

Assignee to have rights of absolute owner.

5. THE ASSNEE shl be entled to & have full power to dispose of or deal with, all the patents, grts, instrumts, & premes so assned, or transferred, or agrd so to be, as the sole & absolute owner & owners thof resply witht being subjt to any control or interferce whatsr of or by the patentee.

Assignee to pay a moiety of net profits to patentee.

6. THE ASSNEE shl pay to the patentee a moiety of all the net gains & profits wch the assnee shl at any time or times hrafter obtain or rece from or by means of such patents, grts, or instrumts as afsd, or such of them as shall or may be obtd from or by means of the sd invention [or improvemts], or any sales or licences, or other disposons of or dealgs with the same [(whether for the sd invention or any such improvemts as afsd)], after paying & deductg all costs, chges, losses, damages & expses whatsr, wch the assnee may pay or incur in or about the obtaing or procurg, or endeavourg to obtain or procure, such patents, grts & instrumts, or any of them, or in or about bringing the sd invention, or any pt thof [or any such improvemts as afsd], into use in the sd sevl countries, or any of them, or in or about any such sales, licences, or other disposons or dealgs as afsd, togr with intt at the rate of —— p.c. p.a. upon such costs, chges, losses, damages, & expses resply, from the time of the paymt thof: And shl, on the 31st day of December in each yr, when the amt of such net gains & profits as afsd, in the hands of the assnee & not previously accted for & divided, shl amt to the sum of £—— or upwards, or within —— days thrafter, pay over one moiety of such amt to the patentee.

Agreement to be avoided if assignee fails to obtain patents or work the

7. THE ASSNEE will use his best endeavours to obtain such patents or other like grts & instrumts as afsd, & to work, use, exercise, & vend the sd invention & every pt thof in the sd sevl countries, & in the event of the failure of the assnee to obtain such patent or other like grt or instrumt as afsd in any country bfe the —— day of ——, or to work, use, exercise, & vend the

sd invention in any country for any continuous period of [one yr], then & in every such case these psnts shl cease to have any effect as regards such country.

PREC. II.

invention (*a*).

8. THE ASSNEE shl keep true & correct accts of all such rects & disbursemts as afsd, & all other material parlars relatg to the premes, & at any time on demand furnish to the patentee a copy of such accts, or of the portion or portions thof not previously furnished to him, & permit him to inspect the same accts, & all documts in the posson or power of the assnee relatg to the premes.

Assignee to keep accounts.

9. [NOTHING HRIN contd shl constitute a ptnp betn the sd pties.]

Assignment not to constitute partnership (*b*).

10. NOTHING HINBFE contd shl prejudice or affect the rt of the patentee to his sd lres patent for the sd invention in the United Kingdom. IN WITS, &c.

Present patent not to be prejudiced.

III.

AGREEMENT *for* SALE *of* PATENT (*c*).

PREC. III.

AGRMT made the —— day of —— BETN A., of, &c., hinafter called "the patentee," of the one pt, & B. carryg on business as —— at, &c., hinafter called the "assnee," of the other pt.

Parties.

1. THE PATENTEE agrees to sell & the assnee agrees to pchase the patentee's patent for ——, dated, &c., for the sum of £—— pd to the patentee by the assnee upon the exon of this agrmt, the rect whof is hby acknowed, & the further paymts hinafter mentd.

Agreement for sale.

2. THE ASSNEE shl also pay to the patentee durg the residue of the term of the sd patent, if the assnee shl so long live & shl continue to carry on the afsd business, the sum of £—— for

Royalty.

(*a*) As to the necessity of such a provision, see note (*f*), p. 377.

(*b*) If the agreement constitutes in law a partnership (as to which see the Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 2, and the cases *infra*, p. 394, note), a declaration that it shall not so operate would be nugatory.

(*c*) This should be registered under 46 & 47 Vict. c. 57, s. 23. See note (*d*), p. 383. As to the stamp, see the Stamp Act, 1891, s. 59, above, p. 357, note.

PREC. III.

every —— of whatever size & description, manufactured accdg to the sd patent, wch shl be sold by the assnee.

Accounts.

3. THE ACCTS betn the sd pties shl be settled half-yrly on the —— day of ——, & the —— day of ——.

Power for patentee to determine agreement if patent not sufficiently worked (a).

4. IF THE assnee shl discontinue the manufacture of —— or shl not manufacture & sell at least —— in any one yr commencg on the —— day of ——, the patentee shl be at liberty by notice in writg given to the assnee, or left at his usual or last known place of abode in England, to determine this agrmt, & the sd patent shl thrupon revert to & become the absolute ppty of the patentee.

5. *Provons as to infringemt*, p. 379.

If patent invalid, agreement to be invalid.

6. IF THE sd lres patent shl be judicially determined to be invalid then these psnts shl thenceforth become void but witht prejudice to the rt of the patentee to recover any moys then due to him hrunder.

On retirement or death of assignee, successor to enter into similar agreement

7. IF THE ASSNEE shl, bfe the expiron of the term of the sd patent, retire from the afsd business or die, he, or his repves, shl within —— months after such retiremt or death, at his or their own expse, cause or procure his succor in the sd business to enter into a similar agrmt with the patentee for the paymt to him durg the residue of the sd term of the sd sum of —— on all —— manufactured accdg to the sd patent, wch shl be sold by such succor, with a similar provo for the event of such succor dying or retirg from the sd business: And in default of such substituted agrmt being entd into within the time afsd this psnt agrmt shl become void, but witht prejudice to the rt of the patentee to retain any moys then already pd to him & to rece any moys then due to him hrunder: And the sd patent shl thrupon revert to & become the absolute ppty of the patentee. IN WITS, &c.

(a) See p. 377, note (*f*).

IV.

PREC. IV.

AGREEMENT *for* SALE *of* PATENT RIGHTS *where the* PATENT *has been applied for but* NOT YET GRANTED (*b*).

Parties.

AGRMT made the —— day of —— BETN A., of, &c., hinafter called "the inventor," of the one pt, & B., carryg on business as ——, at, &c., hinafter called "the assnee," of the other pt. *Recite applicon for patent, form* I. *or* II., p. 375.

Agreement for sale.

1. THE INVENTOR agrees to sell & the assnee agrees to pchase all the rts of the inventor in the sd invention, & the benefit of the sd applicon & premes, & of any lres patent wch shl be grted in psuance thof, *Continue as in Prec. III., clause* 1, *saying,* "inventor" *instead of* "patentee."

Royalty.

2. THE ASSNEE shl also pay to the inventor durg the term of such patent, *&c., as in Prec. III., clause* 2.

Agreement to obtain grant of patent.

3. THE INVENTOR will duly take all necy steps for obtaing the grt to himself of lres patent for the sd invention, & will assn the sd patent when grted to the assnee, & do all other acts & things necy for vestg the same in him. *Continue as in Prec. III., saying* "inventor," *instead of* "patentee," *&* "such patent" *instead of* "the sd patent."

V.

PREC. V.

MORTGAGE *of* LETTERS PATENT (*c*).

Parties.

PARTIES, A., hinafter called "the mtgor," wch expression shl include his exs, ads, & assns, where the context so admits, 1; B., hinafter called "the mtgee," wch expression, &c., *as above,* 2; *Recite the grt of lres patent,* p. 375 *or* 376 : *Agrmt for loan,* p. 1; *First testatum covt for paymt of ppal & intt after default as in* p. 68, *Prec. I.*; AND THIS INDRE ALSO WITNETH that in further psuance, &c., *assnmt of lres patent,*

Recitals.

Witnesseth.

(*b*) This agreement need not and cannot be registered, it not being the practice at the Patent Office to register any document preceding the grant of the patent.

(*c*) To be registered under 46 & 47 Vict. c. 57, s. 23.

PREC. V.

Covenant by mortgagor to pay fees.

p. 376 (*a*); *Provo for redmon of the* "sd invention, lres patent, & premes hby assned," p. 17, *form* III.: *Covt by mtgor*, that he, the mtgor, will pay the fees required by law for keepg up the sd patent in the United Kingdom, at least two calr months bfe the expiron of the prescribed periods, if at the sd respive times any moy shl remain on the secy of these psnts; AND FURTHER that he, the mtgor, will from time to time, so long as any moy shl remain on the secy of these psnts, use his best endeavours to discover any infringemt now already, or hrafter to be made of the sd lres patent hby mtged, or any extension or renewal thof, & will make known the same, when discovered, to the mtgee, & will, if required in writg so to do by the mtgee, eir himself take legal pcdgs for the ppose of stoppg such infringemt or in case the mtgee shl take such pcdgs, will do everythg in his power for the ppose of renderg the same effectual, & will, whether such pcdgs be effectual or not, pay on demand the costs of the mtgee relatg thto as betn solor & client; AND FURTHER that in case the mtgor shl neglect or refuse to make the paymts afsd, or any of them, it shl be lful for the mtgee to pay the same, AND THAT all moys or expses wch shl be pd or incurred by the mtgee in the exercise of any of the powers hinbfe contd, with intt for the same at the rate of —— p.c. p.a., from the time or respive times of the same havg been pd or expended, shl be repd by the mtgor to the mtgee on demand, & in the meantime shl be chged upon the sd premes hby mtged. PROVD ALWAYS, & it is hby agrd that at any time or times bfe the mtgee shl have become entld to exercise the power of sale hinafter contd [vested in him by virtue of these psnts, & the statute in that behalf] it shl be lful for the mtgor, in the name & as the atty of the mtgee, to grt licences for the use of the sd invention & lres patent for such term or terms of yrs, upon such condons & in such mner as he may think fit, but so that the mtgor shl not be authorised to enter into any covts in the name of the mtgee, or to subjt him to any psonal liability, & so that no exclusive licence shl be grted witht the consent in writg of the mtgee, & so that on every such licence there be reserved the best rent or royalty that can conveniently be

To protect patent from infringements.

Power for mortgagee to make payments, to be charged on mortgaged premises.

Power for mortgagor to grant licences until default.

(*a*) Substitute throughout "mtgor" and "mtgee" for "patentee" and "licensee" in the forms.

PREC. V.

obtained, witht takg anythg in the nature of a fine or premium, & so that there be contd in every such licence a power to the mtgee to revoke the sd licence in case of non-pformce of the condons thrin contd, & on non-paymt of the rents or royalties thby reserved, & so that the licensee or licensees do exte a counterpt or duplicate throf, & do thby covt for the due paymt of the rents or royalties thby reserved; *Power to mtgee,* "at any time or times after he shl have become entled to exercise the sd power of sale, to grt licences (whether exclusive or absolute or unrestricted or not) for the use of the sd invention & lres patent for such term or terms of yrs, upon such condons, & in such mner as he may think fit, & in conson of a sum or sums in gross, or any rents or royalties or orwise"; [*Power of sale,* p. 26, *form* II., *mutatis mutandis, unless omitted in reliance on the statute, see* p. 20, *note, extendg the trusts of sale moys to,* "any gross sum or sums, rents, or royalties reced upon the grantg or in respt of any licence or licences";] *mtgee's indemnity clause,* p. 59. In wits, &c.

Power for mortgagee to grant licences after default.

Power of sale.

VI.

LICENCE *to* Use Letters Patent, *with* Variations *for an* Exclusive *or* Restricted Licence, *and for the* Licensees *being* Partners *or a* Company (*b*).

PREC. VI.

Parties, A., *patentee* (hinafter called the patentee, wch expression shl include his exs, ads, & assns, unless such constron is excluded by the context or is orwise inconsistent with the provons hrin contd), 1; B., [& C.,] *or,* "the —— Co. Ld," 2. *Recite A.'s title to patent:* And whas the patentee has agrd with the sd B., [& C.,] *or* "the sd Co," to grt him [them] a licence to use & vend the sd invention [to the extent & subjt to

Recitals.

Agreement.

(*b*) This should be registered under 46 & 47 Vict. c. 57, s. 23; *New Ixion Tyre and Cycle Company* v. *Spilsbury,* [1898] 2 Ch. 484. An exclusive licence does not amount to a grant of the patent, and gives the licensee no right to sue in his own name for infringement, except against persons having notice of the licence; *Heap* v. *Hartley,* 42 Ch. D. 461. The provision enabling the licensee to use the patentee's name is of course of no avail against persons infringing under licence from the patentee.

Effect of licence.

Wit-nesseth.

the restrons, covts, & agrmts, &] upon the terms hinafter expd & contd: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the [sum of £—— now pd by the sd B., [& C.,] *or,* "the sd Co" to the sd patentee (the rect whof is hby acknowed) & of the rent &] royalties or sums hinafter reserved or made payable to the patentee [& of the covts & agrmts on the pt of the sd B., [& C.,] *or,* "the sd Co," hinafter contd,] the patentee doth hby (*a*) grt unto the sd B., his exs, ads & [permitted] assns (*b*), *or,* "the sd B. & C., & the survor of them, & the exs or ads of such survor, their or his ptners or ptner for the time being & [permitted] assns" (*b*), *or,* the sd Co & their [permitted] assns" (*b*), (all of whom are hinafter included in the expression the licensee[s], unless such constron is excluded by the context or is orwise inconsistent with the provons hrin contd,) *continue grt of licence,* p. 376, *form* VIII., *or* IX.; AND IT IS HBY mutually covted & agrd betn & by the sd respive pties hto [& so that the liability of the sd B. & C. hrunder shl be jt & sevl] as follows, namely: *Insert such of the clauses follg as may be appropriate in nod. paragraphs, with the necy verbal alterons for the case of sevl licensees or a Co:—Covt to pay rent & royalties,* p. 377; *Licensee to keep accts & permit inspon,* p. 377; *Licensee to furnish accts half-yrly & verify same,* p. 378; *To affix labels, form* XIII., *or* XIV., p. 378; *Power to patentee to inspect factories,* p. 378; *Licensee* (*c*) *not to use invention orwise than accdg to licence,* p. 379; *Patentee to give licensee assistce,* p. 379; *Patentee to communicate improvemts to him,* p. 379; *Provons as to infringemts,* p. 379 (*d*); *Licensee not to dispute the validity of patent,* p. 380; *Licensee not to assn or grt sub-licences,* p. 380; *Patentee* (*e*) *not to use invention or grt other licences,* p. 380; [*Power to eir pty to determine licence,* p. 380;] *Power to determine licence on non-paymt of royalties, &c.,* p. 380; *Power* (*e*) *to patentee to determine licence if not worked,*

Grant of licence.

Mutual covenants.

Clauses.

(*a*) As to covenants for title, see p. 376, note (*d*).

(*b*) If the licence is not to be transmissible on the licensee's death, omit the words "exs, ads." If it is not to be assignable, omit "assns"; and if it is to be assignable only with the consent of the patentee, insert "permitted."

(*c*) This clause will be omitted in an exclusive licence.

(*d*) See note (*b*), last page.

(*e*) This clause will be inserted if the licence is exclusive.

p. 381; [*Power* (*f*) *to patentee to determine licence if it becomes vested in more than one pson*, p. 381;] [*Provo* (*g*) *determing licence on death of licensee*, p. 381;] *Provon as to fees*, p. 381; [*Covts for title by A.*, p. 382;] [*Reservon of rt to patentee to grt other licences*, p. 382;] *Arbitron clause*, p. 383. In wits, &c.

VII.

LICENCE (*not exclusive*) *by* Deed Poll *to* Use *a* Patent *in consideration of a* Sum *paid down. A short form* (*h*).

PREC. VII.

KNOW ALL MEN BY THESE PSNTS that I, A., *patentee*, of, &c., do hby in conson of the sum of £—— now pd to me by B., of &c., the rect whof I do hby acknowe, give liberty & licence to the sd B. to make, use, exercise, & vend the invention mentd or referred to in certn lres patent grted to me under the seal of the Patent Office bearg date the —— day of —— for the term of —— yrs from the date hrof, but not so as to warrant the origl validity of the sd lres patent. In wits, &c.

VIII.

ASSIGNMENT *of* Licence *to use* Letters Patent (*i*).

PREC. VIII.

Parties, A., *licensee*; B., *assignee*. Whas by an indre dated, &c., & made betn X., of the one pt, & the sd A., who with

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(*f*) This clause will, of course, be omitted if the licence is not transmissible, or is granted to two or more.

(*g*) This clause will, of course, be inserted only if the licence is not to be transmissible on the death of the licensee.

(*h*) This should be registered under 46 & 47 Vict. c. 57, s. 23. As to the effect of a licence, see p. 391, note (*b*).

(*i*) This deed requires an *ad valorem* stamp on the purchase-money; *Smelting Co. of Australia* v. *Commrs., &c.*, [1896] 2 Q. B. 179, and must be registered under 46 & 47 Vict. c. 57, s. 23.

PREC. VIII.

his exs, ads, & assns is thinafter called the licensee, of the other pt, the sd X. grted unto the licensee the sole, full, & exclusive licence to use & exercise an invention for improvemts in, &c., the lres patent for wch bear date, &c., durg the term of —— yrs from the sd —— day of —— & to sell & dispose of all —— manufactured accordg to the sd invention when & as the licensee shd think fit for his absolute use & benefit, subjt to the paymt of the royalties & the pformce & observce of the covts by the licensee & condons thereby reserved & thrin contd, AND WHAS the sd A. has agrd with the sd B. to sell to him the sd licence for the sum of £——. NOW THIS INDRE WITNETH that in psuance, &c., *conson, rect,* the sd A. **as benefl owner** doth hby assn unto the sd B. ALL THAT full & exclusive licence grted to the sd A. by the sd indre of —— to hold the same unto the sd B. for all the residue now unexpired of the sd term of —— yrs grted by the sd indre subjt henceforth to the paymt of the royalties & the pformce & observce of the covts on the pt of the sd A. & condons by & in the sd indre reserved & contd :—*Covt* by B. to pay royalties *& pform covts in licence, Vol. I.*, p. 427, *mutatis mutandis.*

IX.

PREC. IX.

AGREEMENT *for* WORKING *a* PATENT (*a*).

Parties.

Recital of title to patent and agreement.

AGRMT made this —— day of —— BETN A., of &c., of the one pt, & B., of, &c., of the other pt: *Recital of applicon for patent, form* I. *or* II., p. 375; AND WHAS the sd A. has expended the sum of £—— in takg such steps as afsd, & manufacturg specimens of articles formg the subjt of the sd invention, & orwise testg the same, & with a view to promote the success thof, & obtain lres patent, he has reqted the sd B. to enter

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What creates partnership.

(*a*) This should be registered pursuant to 46 & 47 Vict. c. 57, s. 23, as soon as the patent is completed. It is conceived that this agreement creates a partnership, see *Pooley* v. *Driver*, 5 Ch. D. 458 ; *Ex parte Tennant*, 6 Ch. D. 303 ; *Ex parte Delhasse*, 7 Ch. D. 511 ; *Moore* v. *Davis*, 11 Ch. D. 261 ; and the Partnership Act, 1890, ss. 2, 46.

into the arrangemts hinafter expd: NOW IT IS AGRD as follows, viz.:—

Agreement.

As to expenses of perfecting and patenting.

1. THE SD B. shl expend under A.'s direction a further sum of £—— in or towards testg & perfectg the sd invention, & obtaing lres patent for the same, includg the costs of & relatg to this agrmt, & each of the sd pties shl bear & pay one-half of any further expses in addon to the sd last-mentd sum of £—— wch may be incurred in testg & perfectg such invention, & obtaing the grt of or keepg up such lres patent, & assng the same as hinafter mentd, provd that the sd B. shl not be under any obligon to advce a larger sum in the whole than £—— in respt of the expses hinbfe mentd.

Inventor to obtain letters patent and vest same in parties as tenants in common.

2. THE SD A. in conson of the paymts agrd to be made by the sd B. as afsd, shl use his best endeavours to perfect the sd invention & to obtain the grt of the sd lres patent in his own name, & shl, whenever required after the grtg of such lres patent, assn the same, togr with all benefits to be derived from the same or from the sd invention, & all improvemts hrafter to be made by the sd pties or eir of them thrin, or in the mode of makg the articles wch are the subjt thof, so that the same premes may be legally & benefly vested in the sd pties hto as tenants in common in the shares follg, namely, the sd A. —— shares, & the sd B. —— shares, & the sd pties hto shl as well bfe as after the sd assnmt be entled to the same premes in the shares last afsd.

Shares in which capital is to be advanced.

3. IN CASE it shl appear to the sd pties advisable to work the sd patent, each of them shl advce & contribute one moiety of all moys wch may be required for workg the same, & of all costs & expenses of protectg & defendg the same from infringemt or orwise, but any expses of obtaing renewals or extensions of the sd lres patent, or obtaing lres patent for any such improvemt as afsd shl be borne by the sd pties in the proportions in wch they are to be intted in the same as afsd.

Advances to be repaid and profits divided.

4. ALL ADVCES & paymts made & to be made by the sd pties resply in respt of the sd invention & premes (includg the preliminary expses of obtaing the sd lres patent, & testg & perfectg the sd invention), shl be repd to them with intt at £—— p.c. p.a. out of the proceeds to be derived from time to time from the sd invention & premes (includg the royalties & moys to be recd in respt of licences, or for the sale of the sd patent &

PREC. IX.

premes), & the balce of such proceeds after repaymt of the sd advces with intt & the expses of workg the sd patent & premes, shl, durg the continuce of the arrangemt hby entd into for workg the sd patent, be divided betn the sd pties in the proportions in wch they are to be intted in the sd patent & premes as afsd.

Provision in case of patent not being worked.

5. IN CASE it shl be determined not to work the sd invention & premes, or in case the proceeds thof shl not suffice for the repaymt of the sd advces with intt as afsd, neir of the sd pties shl have any claim agst the other of them in respt of such advces & intt: PROVD ALWAYS that in case eir pty shl at any time make advces in excess of the proportion in wch he is bound to contribute towards the expses & paymts afsd, he shl be entled to recover a moiety of such excess from the other of the sd pties with intt at the rate afsd, & such moiety & intt shl be a chge upon the share & intt of such other pty in the sd patent & premes.

Attention to business.

6. THE SD A. shl give as much time & attention as may be necy for workg & developg the sd invention, & shl use his best endeavours to promote the success thof, but the sd B. shl not be bound to devote more time & attention thto than he shl think fit.

Neither party to grant licences, or sell, or incur expenses without consent of other.

7. DURG the continuce of the arrangemt hby made for workg the sd patent & premes, neir of the sd pties shl, witht the consent of the other of them, grt any licence for workg the sd patent & premes, or sell or dispose of his share or intt in the same, or make any paymt, or incur any expses, debts, or liabilities in respt of the premes, & in case any paymt, debt, or liability shl be so made or incurred witht such consent, the same shl be deemed to be made or incurred on the septe & individual acct of the pty makg or incurrg the same, & shl be borne by him exclusively, & the other of the sd pties shl be indemnified by him in respt of the same.

Accounts.

8. THE SD patent & premes shl be worked, & the business thof carried on in the name of the sd A. as patentee, & pper accts shl be kept by him of all paymts made, & moys reced, & liabilities incurred in respt thof, & of all other transons relatg thto & all moys recd in respt of the premes shl be pd into a bank to an acct to be kept in the jt names of the sd pties, & shl not be pd out except upon the jt cheque of both pties. The

books of acct & other documts relatg to the sd patent & premes shl be kept in the custody of the sd A., at his office, or such other place in London as he may think fit, but so that the sd B. may at any time have access to the same. The accts relatg to the sd patent & premes shl be made up & balced half-yrly on the —— day of —— & —— day of ——, or oftener if the sd pties shl so agree.

Duration of arrangement and power to determine.

9. THE ARRANGEMT hby entd into for workg the sd patent & premes shl remain in force until the expiron of the term of the sd lres patent, or of any renewal or extension thof, or any further lrs patent to be obtained for any such improvemts as afsd, in case both the sd pties shl so long live, but subjt to the rt of eir pty to determine the sd arrangemt at the expiron of the first seven yrs from the date hrof on givg three calr months previous notice in writg to the other of them, & in the event of the sd arrangemt being determined by the death of eir pty or by notice as afsd, the sd lres patent, & any extension or renewal thof, & any such further lres patent as afsd, & the royalties or other proceeds to be thenceforth derived from any licences grted previously to such determinon shl belong to the sd pties, or their respive exs, ads, or assns, in the shares afsd, but each of the sd pties, his exs, ads, or assns, shl thenceforth be entled to work & use the sd invention & premes, & to grt licences (not being exclusive licences) for workg & usg the same witht being liable to acct to the other of such pties, his exs, ads, or assns, for the profits or royalties to be derived from the same.

Provision where one party desires to abandon.

10. PROVD ALWAYS that in case at any time bfe the sd arrangemt for workg the sd patent & premes shl have been determined in mner afsd eir of the sd pties shl be of opinion that the same is not likely to prove remunerative, & shl be desirous of abandong the same, but the other of the sd pties shl desire to work, or continue the workg of the same, the sd first-mentd pty may, by notice in writg to the other pty, declare his intention of abandong the same, & the arrangemt hby made for workg the same shl thrupon cease, & the pty givg such notice shl not be under any further liability in respt of the expenses of workg the sd patent or orwise howsr in respt of the premes (save as hinafter mentd), & the sd patent & premes & the profits & proceeds (if any) thof, shl thenceforth be the

absolute & sole ppty of the pty to whom such notice as afsd shl have been given, & such assnmts & acts shl be exted & done as shl be necy for vestg the same in him accdly; PROVD ALWAYS, that in case any proceeds shl at any time thrafter be derived from the sd patent & premes, whether by means of the workg thof or of licences, or the sale thof, then the pty givg such notice shl be entled to be repd out of such proceeds the amt of the advces or paymts wch shl have been made by him for any of the pposes afsd, & wch shl not previously have been repd, with intt at the rate afsd, rateably with the amt wch shl for the time being have been advced or pd by the other pty for such pposes, & shl not have been repd, with intt thron as afsd, but shl have no psonal claim agst such other pty in respt of such advces or paymts, except so far as such proceeds as afsd shl suffice for the repaymt thof as afsd. Provd that in case the moys advced by eir pty previously to the sd notice shl exceed the proportion wch he shl have been bound to contribute as afsd, one moiety of such excess shl, in any event, be repd to him with intt by the other pty.

Interpretation.

11. THE MENTION in this agrmt of eir of the sd pties hto by name, or orwise, shl be deemed to include his exs, ads, & assns, unless orwise inconsistent with the terms & provons hrof. AS WITS, &c.

RELEASES (*a*).

I.

RELEASE *by* DEED POLL *on Payment of a* LEGACY *to a* MARRIED WOMAN *charged on* REAL ESTATE (*b*).

PREC. I.

Recitals.

TO ALL TO WHOM THESE PSNTS SHL COME, A. of, &c., & B. his wife, send greetg. *Recite will of X., bequeathg legacy to B., & charging it in aid of his psonal este on certn real este devised to C. for life, remr to D. in fee; Death of testor & probate, Vol. I.*, p. 374, *seisin, Vol. I.*, p. 367, *form* XLII., *& if the testor died after* 1897 *convce to uses of the will; Death of C.;* AND WHAS the sd legacy of £—— bequed to the sd B. by the sd will, & all intt thron, has been pd to the sd A. with the consent of the sd B. out of the psonal este of the sd testor, as the sd A. & B. do hby acknowe: NOW THESE PSNTS WITS that, in conson of the premes, the sd A. & B. as benefl owners (*c*), do, & each of them doth, hby rele & dischge all the sd messes, lands, tenemts, & hds, situate at, &c., & all other (if any) the hds chged with the paymt of the sd legacy, & also the sd D., his hrs, exs, ads, & assns, & the este of the sd testor, & all other psons & ppty whom it doth or may concern, from the sd legacy or sum of £——, & the intt thof, & all claims & demands in respt thof. IN WITS, &c.

Witness.

(*a*) See 5 Dav. Prec., part 2, p. 139; Elph. Introd., p. 480. The stamp on the release of any property (not being upon a sale or mortgage) is 10*s*., see the Stamp Act, 1891, Sched. tit. RELEASE. If the instrument contains an indemnity as well as a release it requires another 10*s*. stamp.

As to release of legacy by married woman.

(*b*) The husband is made a party, and the deed must be acknowledged by the wife, on the assumption that she was married and the testator died prior to 1883, so that the case is not within the M. W. P. A., 1882 (see p. 87, note); and that the legacy was not given to her for her separate use, expressly or by virtue of the repealed M. W. P. A., 1870, s. 7; otherwise she could release as a *feme sole*.

(*c*) This, it is presumed, implies covenants for title by the releasing parties as to the legacy, being the subject-matter of the release, under the C. A., 1881, s. 7; see Vol. I., p. 406, note.

II.

PREC. II.

RELEASE *of* PART *of* SETTLED ESTATES *from a* CHARGE *of* PORTIONS, *and a* TERM *for securing them, and from a* MORTGAGE *by demise of the term, to* ENABLE *a* SALE *to be effected* (*a*).

Parties, B., C., D., *portionists*, 1; L. & M., *trees of portions term*, 2; P. & Q., *mtgees*, 3; A., *tenant for life*, 4.

Recitals. Title of tenant for life.

Whas by an indre dated, &c., K., who was then entled as tenant for life to the posson of the hds devised by the will of X., which bears date the —— day of ——, and was proved on the —— day of —— in, &c., in exercise of a power given to him by the sd will; *Recite appointmt of portions to K.'s yor chln, & creation of term vested in L. & M. to secure the same; state of K.'s family, shewg that A. is his eldest son, & that B., C., & D. became entled to portions; Disentailg deed by K. & A.; Mtge by demise by trees of term to P. & Q. to secure £——, pt of the portions; Resettlemt subjt to the portions & mtge reducg A.'s este to a life este; Death of K.; State of mtge debt*, p. 7;

Contract for sale.

And whas the sd A. as tenant for life under the sd indre of, &c., *the resettlemt*, & by virtue of the powers of the Settled Land Acts, 1882 to 1890, has entd into a contract for the sale of the hds hby reled:

Agreement to release portions and mortgage.

And whas in order to enable the sd A. to carry the sd sale into effect, he has reqtd the sd B., C., & D., & also the sd P. & Q., to rele the same hds from the sd sum of £—— so chged for portions as afsd, & the intt thron, & from the sum of £—— so due as afsd for ppal & intt on the sd mtge, wch they have resply agrd to do, being satisfied that the residue of the hds on wch the sd portions & mtge debt are resply chged are a sufft secy for the same, & the intt thron resply (*b*):

Mortgagees and trustees to join.

And whas the sd L. & M. have agrd, at the reqt of the sd A., & by the diron of the sd B., C., & D., & the sd P. & Q. have agrd, at the reqt of the sd A., to make such surrenders of the hds so

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(*a*) The incumbrances might be transferred to other parts of the settled estate under the S. L. A., 1882, ss. 5 and 24, or money might be raised by mortgage of such other parts for the purpose of discharging them under the S. L. A., 1890, s. 11; see MORTGAGES, p. 255, note, and Precedent XCVII.; or a sum might be set apart to provide for the incumbrances, and the land sold free therefrom under the C. A., 1881, s. 5, see Vol. I., p. 514, note. If the land is registered any entries made for securing the unpaid portions may require alteration.

(*b*) For a recital where other security is substituted, see the next Precedent.

agrd to be sold as afsd as are hinafter contd: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the premes, they the sd B., C., & D., **as mtgees**, at the reqt of the sd A., do, & each of them doth, hby rele ALL & SINGR the hds specified in the schdle hto from the sd sum so chged for the portions of the yor chln of the sd K. as afsd, & from all intt for the same, And from all actions, pcdgs, claims, & demands, in respt thof, or of any pt thof, resply, or for or in respt of anything in anywise relatg to the premes. *Further Testatum*, They the sd L. & M., **as trees**, at the reqt of the sd A., & by the diron of the sd B., C., & D., do, & each of them doth, hby surrender unto the sd A. & his assns, ALL & SINGR the sd —— & hds specified in the sd schdle hto, To the intent that the sd term of —— yrs may merge & be absolutely extinguished in the freehd & inhance of the sd premes. *Further Testatum*, They the sd P. & Q., **as mtgees**, do, & each of them doth, hby surrender & rele unto the sd A. & his assns, ALL & SINGR the hds, &c., *as above*, freed & dischged from all ppal moys & intt due & owing to the sd P. & Q. on the secy of & from all claims & demands under the hinbfe recited indre of mtge of, &c., to the intent that the sd term of —— yrs thby created may merge, &c., *as above*: PROVD ALWAYS that nothing hrin contd shl prejudice or affect the secy of the sd P. & Q., under the sd indre of mtge as regards the other hds thrin comprd. IN WITS, &c.

Witnesseth.

Release of portions.

Surrender of portions term.

Release of mortgage.

Proviso.

The Schdle above refd to.

[*Schdle.*]

III.

PREC. III.

RELEASE *of* VARIOUS INCUMBRANCES *on* SETTLED ESTATES *contracted to be sold, the* INCUMBRANCES NOT *being* PAID OFF, *but* OTHER SECURITY *having been* SUBSTITUTED (*a*).

Recitals. State of mortgage debts. Agreement.

PARTIES, Incumbcers of first, second, & third pts, A., tenant for life, of fourth pt. Recite settlemt subjt to incumbces ; AND WHAS a sum of moy is still due to each of the sd respive mtgees on their sd respive secs; AND WHAS the sd A. has entd into a contract for the sale of the —— & hds hby reled to X., of, &c., & in order that he may be enabled to carry out & complete the sd sale, he has applied to the sd respive mtgees to rele the sd premes so contracted to be sold as afsd from their sd sevl mtge secs, accdg to the estes & intts of the sd mtgees resply thrin, wch the sd mtgees have agrd to do upon havg other sufft secy given to them resply for their sd mtge debts, wch secs have been already effected & completed, as they, the sd mtgees, do hby resply acknowe : NOW THIS INDRE WITNETH that, in psuance of the sd agrmt, & in conson of the premes, they, the sd pties hto of the first, second, & third pts, **as mtgees**, accdg to their sevl estes & intts in the hds hinafter descd & reled under the sd respive indres of mtge, do resply hby grt & rele unto the sd A., *Pcels,* TO HOLD the same Unto the sd A., & his hrs, dischged from all & every the ppal moys & intt due & owing under the sd sevl mtge secs, & all claims & demands under or on acct of the sd secs resply, TO THE USES, upon the trusts, & subjt to the powers & provons in & by the hinbfe recited indre of settlemt decld & contd concerng the same premes, or such of the same uses, trusts, powers, & provons as are now subsistg & capable of takg effect. IN WITS, &c.

Witnesseth. Release. Habendum. To trustees. On trusts of settlement.

(*a*) See the last Precedent, and note (*a*) thereto.

IV.

RELEASE *of* QUIT RENTS (*b*) *and* MANORIAL RIGHTS *affecting* FREEHOLDS *where both the* MANOR *and the* FREEHOLDS *are* SETTLED (*c*).

PREC. IV.

PARTIES, A., *lord of the manor, tenant for life*, 1 ; B. & C., *trees of manor*, 2 ; D., *tenant for life of freehds held of the*

Provisions of the C. A. 1881, as to redemption of quit rents, &c.

(*b*) The C. A. 1881, s. 45, contains provisions enabling quit and other perpetual rents issuing out of land to be redeemed on the requisition of the owner of the land or any person interested therein with the aid of the Land Commissioners (now the Board of Agriculture), who, on payment or tender to the person entitled to or having power to dispose of the rent or to give a discharge for the value thereof of the amount certified by the Board to be the value, are to certify that the rent is redeemed, and the land is to be thereby discharged. But the Act does not apply to reliefs and other manorial services not being quit rents.

Provisions of S. L. A. 1882, as to the sale and purchase of quit rents and seignorial rights.

(*c*) The S. L. A., s. 3 (ii.), empowers a tenant for life or other limited owner, as defined by ss. 2 and 58, where the settlement comprises a manor, to sell the seignory of any freehold land held of the manor, with or without any exception or reservation of mines or minerals or of rights as to mining, so as to effect an enfranchisement. The provisions stated in Vol. I., pp. 467, 489, notes, as to sales and conveyances under the Act, apply to enfranchisements. By s. 21 capital moneys arising under the Act are authorised to be applied in the purchase (sub-s. (ii.)) of quit rents charged on or payable out of the settled land, and (sub-s. (v.)) in the purchase of the seignory of any part of the settled land being freehold. By s. 18, money required for enfranchisement (which appears to include the purchase of the seignory of freehold land, see s. 3 (ii.)) may be raised by mortgage. As to the mode in which quit rents, &c., affecting a settled estate, and purchased by direction of the tenant for life with capital monies of the settlement, are to be conveyed, see s. 24 of the Act, Vol. I., p. 490, note.

If the manor is vested in an infant tenant for life or in tail or fee, the release of the quit rents, &c., may be made by the "trustees" within the meaning of the Act, under s. 59 or 60 ; see a form of conveyance on sale by trustees of an infant's estate under the Act, Vol. I., p. 486.

Where the release of the rents is made by the trustees (having no estate) under an express power, the tenant for life or limited owner as defined by the S. L. A. (if any) would be a necessary consenting party under s. 56 ; and the conveyance would be by revocation and appointment of the use. The following is the substance of the operative clause in such a case, and it will also serve to show how recitals may (as they in general should) be dispensed with :—

Variation for release under express power.

"WITNETH that, in conson of £—— as the pchase moy for the rents, reliefs, heriots, & services hinafter mentd, to the sd, *trees*, as the donees of a power of sale contd in a certn indre of settlemt, dated, &c., & made, &c., pd by the sd, *pchaser* (the rect, &c.), the sd, *trees*, **as trees,** in exercise of the sd power of sale, & of every other power, &c. [& at the reqt hby testified of

Recitals.
Settlement of manor.
Will of freeholds.
Quit rents, &c.
Agreement.
Direction as to payment to trustees.
Witnesseth.

manor, 3; E. & F., *trees of freehds*, 4. *Recite settlemt & events* (*a*) *by virtue of wch A. is,* "tenant for life in posson," *& B. & C. are,* "trees with power of sale," *of,* "the manor of —— in the Coy of ——," *or,* "are trees of the sd indre of settlemt for the pposes of the Settled Land Acts, 1882 to 1890;" *Will & events by virtue of wch D. is,* "tenant for life in posson," *& E. & F.,* "trees with power of sale," *of,* "the lands descd in the first schdle hto," *or,* "are trees of the sd will for the pposes of the sd Acts:" AND WHAS, the lands descd in the first schdle hto are freehds of inhance held of the sd manor of ——, by the sevl yrly quit rents hinafter mentd, & reliefs & heriots & other services: AND WHAS, by virtue of the powers vested in them resply under the Acts, the sd A. & D. have mutually agrd for the rele by the sd A. by way of enfranchisemt of the sd quit rents, reliefs, heriots, & services for the sum of £——: AND WHAS the sd A. has directed that the sd sum of £—— shl be pd to the sd B. & C. as such trees of the sd indre of settlemt, of, &c., as afsd, & the sd D. has directed the sd E. & F. to pay the sd sum of £—— to the sd B. & C. out of capl moys in their hands as trees of the sd will applicable for that ppose, under the afsd statute; [*Recital as to prodon of munimts, Vol. I.*, p. 382]: NOW THIS INDRE WITNETH that, in psuance of such agrmt & in conson of the sum of £—— pd psuant to such respive dirons as afsd by the sd E. & F. to the sd B. & C. (the rect, &c.), the sd A., **as benefl owner**, by virtue & in exercise of the powers vested in him under the afsd statute, & of every other power in this behalf him enablg doth

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the sd, *tenant for life*, as tenant for life under the sd settlemt], do hby absolutely revoke & make void ALL the uses, trusts, powers, & provons by the sd indre of settlemt expd & decld so far as relates to the rents, reliefs, heriots, & services, hinafter appted & assured, & do hby appt that ALL those annl quit or other rents, &c., payable or to be rendered for or in respt of all those lands, &c., & of wch hds the sd, *pchaser*, is seised in fee simple in posson as freehd held of the manor of —— in the coy of ——, & all other rents, &c., shl henceforth remain & be TO THE USE of the sd, *pchaser*, his hrs & assns, To the intent, &c."

(*a*) See other forms of recitals, Vol. I., pp. 370 *et seq.*

hby, by the diron of the sd D., grt & rele unto the sd E. & F., ALL THOSE sevl yrly quit or other rents of £—— & £——, & all reliefs & heriots payable or to be rendered on death or alienon or orwise in respt of, & all manorial & seignorial services payable or of right accustomed in respt of or affectg all & singr the hds descd in the first schdle hto. Savg & reservg nevs to the sd A. & his succors in title as lords of the sd manor fealty (*b*) in respt of the sd hds: TO HOLD the same UNTO the sd E. & F. & their heirs, *to uses of will, see Vol. I.*, p. 403, to the intent that the same may be merged in the sd hds, & that the same may be reled & for ever dischged thfrom, & from all claims & demands in respt thof. [*Add, if desired, provo restrictg A.'s liability on his implied covts for title, Vol. I.*, p. 419;] *Acknmt & undertakg by A. to E. & F. as to munimts in second schdle, Vol. I.*, p. 426. IN WITS, &c.

Release. Quit rents, &c.

Habendum to uses of will.

[*Two Schdles.*]

V.

RELEASE *of a perpetual* RENTCHARGE *on its* PURCHASE *by the* OWNER *of the* ESTATE, *so as to be kept on foot* (*c*).

PREC. V.

PARTIES, A., *owner of rentchge*, 1; B., *owner of este*, 2; C. *tree*, 3. *Recite creation of, & devolon of title to rentchge, & B.'s title to este;* AND WHAS the sd B. has pd to the sd A. the sd anny, & all arrears thof to the day of the date hrof, as the sd A. doth hby acknowe; AND WHAS the sd B. has agrd with the sd A. for the pchase of the sd anny of £—— for the sum of £——, & the sd B. has reqted that the same may be grted to the sd C., in trust for him the sd B., in mner hinafter expd: NOW THIS INDRE WITNETH that, in psuance, &c., *Conson, Rect*, the sd A., **as benefl owner**, at the reqt of the sd B. doth

Recitals.

Payment of rentcharge.

Agreement.

Witnesseth.

(*b*) Fealty is reserved to show that the land is still held of the manor so as to preserve the right of escheat.

(*c*) There being other outstanding rentcharges or incumbrances payable *pari passu*, or subsequently created by a previous owner. Compare the Precedents in Vol. I., pp. 457, 496.

PREC. V.

Grant. Rent-charge. Habendum. To use of trustee to keep alive rent-charge.

hby grt & assn unto the sd C., ALL THAT the sd perpetual anny or yrly rentchge of £—— so given & devised to him, the sd A., his hrs & assns, by the sd will of the sd —— deced, [*or*, created by the sd indre of, &c.,] as afsd, & all future claim & demand of him, the sd A., & his hrs, to, or concerng the sd anny & premes, togr with all powers & remedies for enforcg & recoverg paymt thof: TO HOLD the same premes UNTO & TO THE USE of the sd C., his hrs & assns, UPON TRUST for the sd B., his hrs & assns, & to be grted & disposed of from time to time as he or they shl direct & appt, To the intent that the sd anny, & the fee simple & inhance thof, may be kept distinct from the sd messes & lands chged with the paymt thof, & the fee simple & the inhance thof, & not be merged or extinguished thrin. IN WITS, &c.

VI.

PREC. VI.

RELEASE *of* SETTLED LAND *by Improvement Company and their mortgagees on* REDEMPTION *of* IMPROVEMENT RENTCHARGE *out of* CAPITAL *Money, under the Settled Land Act,* 1887 (*a*).

Parties.

PARTIES, *mtgees* (hinafter called the mtgees), 1; *Improvemt Co* (hinafter called the Co), 2; A., *equitable tenant for life*, 3; *trees*, 4. *Recite absolute order chging lands with improvemt*

Redemption of improvement rent-charges out of capital money.

(*a*) The S. L. A. 1887 (50 & 51 Vict. c. 30) (passed in consequence of *Re Knatchbull*, 27 Ch. D. 349, 29 Ch. D. 588) enables capital money to be applied in "redeeming or otherwise providing for the payment of" a rentcharge (temporary or perpetual) created under any Act of Parliament for paying off moneys advanced for defraying the expenses of any improvement "of a kind authorised by the S. L. A. 1882." It was held in *Re Sudeley*, 37 Ch. D. 123, that so much only of the instalments of the rentcharge as represents capital can be paid out of capital money under that enactment, and that the tenant for life must bear so much as represents interest; but this has been overruled, and it has been held that a rentcharge may be redeemed by payment, in addition to the balance of principal remaining unpaid, of a reasonable sum by way of bonus for the loss of interest by reason of the redemption (*Re Egmont*, 45 Ch. D. 395); and also that the tenant for life may in lieu of redeeming the rentcharge have capital money applied in payment of the future instalments although consisting partly of interest (*Re Howard*, [1892] 2 Ch. 233); but not in recouping to him back instalments (*ib.*); and this is not altered by the S. L. A. 1890 (53 & 54 Vict. c. 69), s. 15 (*Re Dalison*, [1892] 3 Ch. 522), and an order cannot be made prospectively, directing capital money which may thereafter come to the hands

Recitals.

Agreement for redemption.

Agreement by mortgagees to join.

Witnesseth.

Consideration.

Release.

rentchge, mtge [*order of Ct in an action for the admon of the trusts of the settlemt authorisg the trees to apply capl moy in redeemg the chge*]: AND WHAS the sd A., who is the equitable tenant for life of the sd este under the sd settlemt, with the concurrce of the sd pties hto of the 4th pt, who are the psnt trees of the sd settlemt, has agrd with the Co for the pchase & redmon of the sd improvemt rentchge for the sum of £——, wch sum is payable by the sd trees out of capl moy in their hands as such trees: AND WHAS a sum considerably exceedg the amt of the sd pchase-moy is now due to the mtgees under their sd mtge secy, & they have agrd to join hrin upon the terms & in mner hrin appearg: NOW THIS INDRE WITNETH that, in conson of the sum of £—— now pd by the sd trees out of capl moy in their hands applicable for that ppose, by the diron of the sd A. [*or,* psuant to the sd order of Ct], in mner follg, namely, as to the sum of £—— pt thof to the mtgees with the approbon of the Co in pt dischge of the moys owing to them under their sd mtge secy as afsd (the rect, &c.), & as to the sum of £—— the residue thof to the Co (the rect & paymt, &c.), the mtgees **as mtgees** & by the diron of the Co, hby assn & rele, & the Co **as mtgees** hby assn, rele, & confirm unto the sd trees (pties hto of the 4th pt (*b*)) the improvemt rentchge created by the sd absolute order of, &c., & all the

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of the trustees to be applied in repayment of the tenant for life of moneys paid by him in keeping down such a rentcharge (*Re Bristol*, [1893] 3 Ch. 161). The payment of a premium on a transfer in order to obtain a reduction in the rate of interest at which the rentcharge is calculated does not amount to a partial redemption: *Re Verney's Settled Estates*, [1898] 1 Ch. 508. The Act of 1887 applies although the improved land has been sold, and the rentcharge shifted to other parts of the settled estate (*Re Howard*). But it should be noted that it does not apply to rentcharges created for improvements other than those authorised by the Act of 1882.

As to Improvement of Land Act, 1864.

Attention may here be called to an error of common occurrence (though of little, if any, practical importance), in speaking of improvement rentcharges as created under the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), which were in fact created under the Special Acts of the different lands improvement companies, all of which were in existence before the Act of 1864, and whose operations are conducted under their own Acts, and not under the general Act of 1864, as they have not availed themselves of the option given to them by s. 54 of the Act of 1864 to adopt that Act in lieu of their special Acts; the result being that there are (it is believed) comparatively few rentcharges in existence which have been created under the powers of the Act of 1864. As to the registration of such charges, see L. T. R. 116.

(*b*) If A. were legal tenant for life the release would be to him.

PREC. VI.

Habendum.

powers, authorities, rts, & remedies of the mtgees & the Co resply with reference thto To HOLD the same unto the sd trees absolutely dischged from all ppal moys & intt owing upon & all claims & demands under the sd recited mtge to the intent that the sd rentchge shl sink into & merge in the inhance of the sd lands chged thrwith for the benefit of the pson or psons for the time being entled to such lands resply: [*Acknmt by mtgees of rt to prodon of mtge, Vol. I.*, p. 426, *mutatis mutandis*]. IN WITS, &c.

VII.

PREC. VII.

RELEASE *to* TRUSTEES *of* MARRIAGE SETTLEMENT (*comprising* PERSONAL ESTATE *in Possession and Reversion, and a* POLICY *on the Husband's Life*) *on* DISTRIBUTION *of the Trust Funds, with the* EXCEPTION *of* SHARES *belonging to* INFANTS. THE DEALINGS *with the Trust Funds and other transactions being* RECITED IN DETAIL, *and an* INDEMNITY *being given to the* TRUSTEES *in respect of certain* BREACHES *of* TRUST (*a*).

Recitals.

Settlement.

PARTIES, A., *husbd & repve of deced daur*, 1; B., *eldest son & also exor of last tenant for life*, 2; C. & D. his wife, *a married daur* (*b*), 3; E. & F., *trees of daur's settlemt*, 4; G., *a son*, 5; H. & I., *trees of settlemt*, 6; WHAS by an indre, dated, &c., & made, &c. (being the settlemt exted in conson of a marre wch was shortly aftwds solemnized betn the sd K. & L.), certn pts

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(*a*) As to the advisability of independent legal advice in the case of a release executed by young persons soon after attaining majority, see *Re Garnett*, 31 Ch. D. 1, where the release was set aside on the ground of mistake. The following recital may be inserted:—"AND WHAS in the negotions for, & the preparon of these psnts, the pties hto of the first —— pts were advised by Messrs. ——, of ——, solors, & the sd H. & L. were advised by Messrs. ——, of ——, solors."

(*b*) Where the married woman is absolutely entitled as a *feme sole* under the M. W. P. A. 1882 (as to which see pp. 87, 89, notes), or for her separate use under the old law, the husband need not concur, unless to guard against the possibility of his wife having made a disposition in his favour, or to enter into covenants.

or shares of & in the trust funds & ppty thrin mentd, to wch the sd L. was entled in mner thrin appearg in revon expectant on the dece of M. & N., her father & mother, were assned to O. & P. upon the trusts thinafter decld, & it was thby decld that after the then intd marre the sd O. & P., their exs & ads, shd stand possed of the sd pts or shares thby assned when the same shd fall into posson & be reced, & also of the sum of £—— then secd at intt by an indre of mtge thrin refd to (wch sum, togr with the secy for the same, had been transferred to the sd O. & P. by an indre bearg even date with the indre now in recital), & of the sum of £—— Annies, wch had also been transferred into their names, & of the moys, stks, funds, & secs, representg the same respive premes, upon trust eir to permit the same to remain in their actual state of investmt resply, or at any time with the consent of the sd K. & L., or the survor of them, & after the death of such survor at the discron of the trees or tree for the time being, to sell, call in, & convert into moy such respive trust premes, or any pt or pts thof resply, & to invest the proceeds, *set out remr of the trusts for investmt & varying investmts*, & it was thby decld that the sd trees or tree shd, &c., *recite trusts of the income for K. & L. durg their lives, & of the capl after their dece for their issue as they shd appt, & in default for sons at twenty-one & daurs at twenty-one or marre, & the hotchpot clause*, & the sd indre now in recital contd the usual powers & provons for the advancemt [& maintence] of the chln of the sd then intd marre [& for the accumulon of the surplus income of the expectant shares of such chln] durg minority, & also a provon for the settlemt of any other ppty to wch the sd L. was or might durg the sd intd coverture become entled of the value of £—— or upwards (except as thrin mentd), upon trusts correspondg with the trusts thinbfre decld concerning the sd trust premes thinbfre settled, & by the same indre the sd K. assned a policy of assurce on his life for the sum of £——, effected in the —— Office, & the moys assured by or to become payable under the same to the sd O. & P., to be held after the sd then intd marre upon trusts correspondg with the trusts thinbfe decld concerng the sd trust premes thinbfe settled, save as regards the ultimate trust thof in the event of such default or failure of chln of the sd marre as thrin mentd, & the sd indre now in recital contd a provon for the

State of family.

Receipt and investment of reversion.

Appointment of new trustee.

Repayment and investment of mortgage moneys.

Breach of trust.

Advancement of child (*c*).

apptmt of new trees thof in the place of any tree or trees dying or desirg to be dischged & orwise as thrin expd; AND WHAS there were six chln only of the sd marre of the sd K. & L., namely, Q. & R., both of whom died under the age of twenty-one yrs, & witht havg been married, a daur, S., who intermarried with the sd A. in the yr ——, & died in the yr ——, leavg issue two chln, namely, T. & U., both of whom are livg but are infants under the age of twenty-one yrs, a son, the sd B., who has attned the age of twenty-one yrs, a daur, the sd D., who intermarried with the sd C., in the yr ——, & a son, the sd G., who has attned the age of twenty-one yrs; AND WHAS the sd M. died in the yr ——, & the sd N. died in the yr ——; AND WHAS shortly after the death of the sd N. the sum of £—— was reced by the sd O. & P. as the net amt or value (after dedon & allowce of death duties & expses) of the pts or shares of & in the trust funds & ppty afsd, wch were assned to them by the sd L. by the hinbfe recited indre of settlemt, & throut the sum of £—— was pd by the sd O. & P. for costs wch they had incurred in relon to the sd trust premes, & the residue thof, amtg to £——, was invested by them in the pchase of £—— £— p.c. India Stk; AND WHAS by an indre, dated, &c., & made, &c., the sd H. was, under the power for that ppose contd in the sd indre of settlemt as afsd, appted a tree thof in the place of the sd O., who retired from the sd trust, & by the same indre & a certn other indre bearg even date thwith (being a transfer of the sd mtge), or by other appropriate means, the trust ppty then subjt to the trusts of the sd settlemt was thrupon duly transferred so as to be vested in the sd P. jtly with the sd H.; AND WHAS in the yr —— the sd ppal sum of £—— wch was then invested on mtge as afsd, was repd to the sd P. & H., & was invested by them, at the reqt of the sd K. & L., in the pchase of —— shares of £—— each in the —— Rly Co; AND WHAS it is considered doubtful whether such last-mentd investmt was authorised by the trusts of the sd indre of settlemt; AND WHAS in the yr —— the sd P. & H., with the consent in writg of the sd K. & L., sold two

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(*c*) Generally the advanced child must be debited with interest at 4 p.c. p.a. from the time of distribution, *Re Rees*, 17 Ch. D. 701; *Re Dallmeyer*, [1896] 1 Ch. 373.

of such rly shares, & applied the net proceeds thof, amtg to £——, for the advancemt of the sd G., under the power for that ppose contd in the sd indre of settlemt; AND WHAS the sd P. died in the yr ——, & by an indre, dated, &c., the sd I. was, in exercise of the sd power contd in the sd settlemt, duly appted a tree thof in his place, & by the same indre the sd poly of assurce & the moys assured thby were assned to the sd H. & I. upon the trusts afsd; AND WHAS the costs of & incidental to such apptmt & other expses incurred by the sd trees, amtg to £——, were raised by the sale of £——, pt of the sd sum of £—— Annies, & the sum of £——, the residue of such Annies, & the sd sum of £—— India Stk, & the sd remaing shares of the sd Rly Co were duly transferred to the sd H. & I.; AND WHAS in the yr —— the sd H. & I., at the reqt of the sd K. & L., sold out eight of the sd rly shares, realisg £—— & applied the same in paymt of certn debts wch had been incurred by the sd B., who was then an infant; AND WHAS it is apprehended that such last-mentd applicon was a breach of trust or unauthorised, but the sd B. has agrd to treat such sum of £—— as pt of the sum of £—— hinafter recited to have been appted to him & to give to the sd H. & I. such rele in respt thof as is hinafter contd (*a*); AND WHAS the sd K. died in the yr —— witht havg joined the sd L. in makg any apptmt under the power of jt apptmt among the issue of their sd marre, given to them by the sd indre of settlemt; AND WHAS shortly after the dece of the sd K., the sd trees reced the sum of £—— in respt of the sum assured by the sd poly on his life & addons thto, & invested the same after payg throut the sum of £—— for costs in the pchase of the sum of £—— £— p.c. India Stk, makg with the sd sum of £—— the sum of £—— like Stk; AND WHAS by a deed-poll, dated, &c., the sd L. appted that in case the then intd marre betn the sd C. & D. shd take place within six calr months from the date of the deed now in recital, the sum of £——, pt of the ppty subjt to the trusts of the sd indre of settlemt, shd be held in trust for & absolutely vested in the sd D., her exs, ads, & assns, subjt to the life intt of the sd L. thrin; AND WHAS by an indre,

Appointment of new trustee.

Payment of costs and transfer of trust funds.

Sale of part of trust funds, and application in breach of trust.

Death of tenant for life without appointing.

Receipt and investment of policy moneys.

Appointment in favour of a daughter.

Marriage settlement of daughter.

(*a*) This provision is not within the Infants' Relief Act, 1874 (37 & 38 Vict. c. 62).

PREC. VII. dated, &c., & made, &c. (being the settlemt made on the marre of the sd C. & D.), the sd D. assned the sd sum of £——, to wch she was entled by virtue of such apptmt as last afsd, to the sd E. & F., their exs, ads, & assns upon certn trusts thrin decld concerng the same, & it was thby exply decld that the sd investmt of the sum of £—— in the pchase of the sd rly shares was to be considered, so far as regarded the psons claimg under the indre now in recital, a pper investmt of the trust funds of the hinbfe recited indre of settlemt; *Recite rect clause, if any, in D.'s settlemt; Apptmt by L. of £—— to B.* & by the same indre the sd L. reled her life-intt in the income of such sum of £—— to the sd B. to the intent that the same might be vested in him in posson, & be immedly raiseable; AND WHAS shortly after the date of the lastly hinbfe recited indre, the sd H. & I. raised the sum of £—— by the sale of the sd sum of £—— Annies, & of the sum of £—— India Stk, pt of the sd sum of £—— like Stk, & after paymt throut of the sd sum of £—— in dischge of the duty wch wd become payable in respt thof on the death of the sd L., they pd the sum of £——, being the residue thof to the sd B., makg, with the sum of £—— hinbfe recited to have been pd on acct of the sd B., the sum of £—— so appted to him as afsd; *Apptmt by L. of £—— to T. & U. subjt to her own life-intt; Will of L. apptg B. exor.*; AND WHAS the sd L. died on, &c., witht havg made any further apptmt of any pt of the sd trust-funds under the power vested in her by the sd indre of settlemt as afsd: *Probate;* AND WHAS all the income wch accrued from the sd trust-funds, or such of them as had, for the time being, fallen into posson, up to the death of the sd K. (includg the apportioned pt belonging to his este of the income accrug due at his death) was duly pd to him, or his repves, & all the income wch subseqtly accrued from the sd trust funds, except such pts thof as had been applied or disposed of as afsd, was duly pd to the sd L. durg her life, as the sd B., as exor of the sd L., doth hby acknowe; AND WHAS the sd H. & I. have reced £—— in respt of income of the sd trust premes since the death of the sd L., & have pd £——, being the apportioned pt thof wch accrued durg the life of the sd L. to the sd B., as her exor, as he doth hby acknowe, & have applied £——, the residue thof, in paymt of costs incurred in relon to the sd

Appointment of sum and release of life interest to son.

Payment thereof.

Death of tenant for life.

Application of income.

trust; AND WHAS the sd H. & I. lately sold the sum of £——, pt of the sum of £—— India Stk, then remaing in their names as afsd, & have throut pd the remr of the duties amtg to £—— wch became payable on the death of the sd L. in respt of the sd trust premes, & have retained the sum of £——, being the residue of the proceeds of such sale, in satisfon of the remaing costs & expses incurred by them in relon to the sd trust & these psnts; AND WHAS no ppty, real or psonal, has at any time been settled under the provons contd in the hinbfe recited indre for the settlemt of other or after-acquired ppty of the sd L., & no ppty, real or psonal, save as hinbfe appears, has at any time come to the hands of the sd H. & I. as trees of the sd indre or (so far as is known) become subjt to the trusts thof; AND WHAS the accts of the sd trees, showg all the parlars of their rects & disbursemts in relon to the sd trust este & premes, & the dealgs thwith, from the date of the sd indre of settlemt to the psnt time, have been submitted to all the sd pties hto of the first five pts, & been carefully examined by them, & have been signed by such respive pties in testimony of their approval thof (*b*); AND WHAS the sd H. & I. have retained the sum of £—— India Stk, wch, at the price of the day, is of the value of £——, to answer the sum so appted to the sd T. & U. (*the infants*) as afsd, & have transferred the residue of the sd stk & —— shares of the sd Rly Co (being togr at the respive market prices of the day of the value of £——) to the sd E. & F., with the approbon of the sd C. & D., in satisfon of the sum appted to the sd D. as afsd, as they, the sd C., D., E., & F., do resply hby acknowe; AND WHAS the sd remaing —— shares of the sd Rly Co, wch, at the market price of the day, are of the value of £——, & wch represent the portion remaing unappted of the sd trust premes, belong wholly to the sd G., the sd pties hto of the first four pts being excluded by the effect of the hotchpot clause contd in the sd indre of settlemt from takg any share thrin, & such last-mentd rly shares have accdly

Payment of death duties and costs (*a*).

No after-acquired property.

Accounts.

Retention of infants' shares and payment of daughter's share.

Transfer of remaining funds to son.

(*a*) As to the liability to succession duty of sums advanced under a power of advancement, see *Ex parte Sitwell*, 21 Q. B. D. 466.

(*b*) This is generally more convenient than scheduling the accounts. A separate statement of account referred to in the release so as to form part of it was formerly (under the head "schedule" in the Stamp Act, 1870) chargeable with a 10*s.* stamp; but this is not so under the Act of 1891.

That parties are satisfied with distribution.

Agreement for release.

Witnesseth.

Release.

been transferred by the sd H. & I. to the sd G., as he doth hby acknowe; AND WHAS the sd sevl pties hto of the first five pts are satisfied with the applicon, disposon, divon, & distribon of the sd trust este & premes hinbfe recited to have been made, & that such divon & distribon is in full satisfon of their respive shares & intts thrin under the sd indre of settlemt [save as regards any further share or shares wch may hrafter accrue to them resply as hinafter mentd]; AND WHAS bfe the sevl paymts & transfers lastly hinbfe recited were made, it was stipulated & agrd that the rele & indemnity hinafter contd shd be made & given; NOW THIS INDRE WITNETH that, in psuance of the sd agrmt, & in conson of the sevl paymts & transfers so made as afsd, & of the premes, the sd A., B., C., D., E., F., & G. (*a*) [*or*, the sd respive pties hto of the first five pts] (the sd B. concurrg hrin as well in respt of his own benefl intt in the premes as in his character of exor of the sd L.), do & each & every of them doth hby absolutely rele, & for ever dischge the sd H. & I., & each of them, their, & each of their hrs, exs, & ads [& also the sd O., his hrs, exs, & ads, este & effects, & the este & effects of the sd P. deced (*b*)] from the moys, stks, funds, shares, & secs so pd or transferred by the sd H. & I., or the trees for the time being of the sd indre of settlemt to the sd B., E., F., & G., as hinbfe mentd, & all other the trust este & ppty comprd in or wch is or has at any time been subjt to the trusts of the sd indre of settlemt, & the intt, divds, & income thof, & every pt thof resply, & from all actions, pcdgs, claims, & demands, in relon thto, or orwise under the trusts of the sd indre of settlemt [or any sale, investmt, paymt, allowce, acct, or thing, whatsr at any time made, done, exted, omitted or neglected by the sd H. & I., or the trees or tree for the time being of the sd settlemt, or any or eir of them, in or

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As to trustees giving release.

(*a*) The trustees of the sub-settlement might, in the absence of express authority in their settlement to give a release, object, and they could not be required, to do so (see *Re Cater*, 25 Beav. 366); in that case they will concur in the deed merely for the purpose of acknowledging the receipt of the share paid to them. Large powers of settling accounts, compromising and giving releases, &c., are given to executors and trustees by the T. A. 1893, s. 21, which applies to trusts created before as well as since the Act.

(*b*) Words releasing retired, and the estates of deceased, trustees are commonly and properly inserted.

about the exon of the trusts thof, whether hinbfe specifically mentd or refd to or not], or for or in respt of anything relatg to the premes, AND each of them the sd respive pties hto of the first five pts as to his or her own acts only doth hby covt with the sd H. & I. & their respive exs & ads, that they the sd covtg pties resply have not done or been pty or privy to anything whby the respive shares & intt of the sd covt pties in the sd trust este & premes are or may be in any mner incumbered or affected save as hinbfe appears or whby they are resply disentled to share in the divon & distribon of the sd trust este & premes in mner hinbfe appearg: AND THIS INDRE ALSO WITNETH that, in psuance of the sd agreemt, & in conson of the premes, the sd A., B., C., D., & G. do hby jtly, & each of them doth hby sevlly covt with the sd H. & I., their, & each of their, exs & ads, that they, the sd covtg pties, & every of them, their & every of their, hrs, exs, & ads, will at all times hrafter, keep indemnified the sd H. & I., & each of them, their & each of their, hrs, exs, & ads, & also the sd O., his hrs, exs, & ads, este & effects, & the este & effects of the sd P., deced, from all actions, pcdgs, claims, & demands on the pt of any pson or psons whomsr, & all costs, damages, & expses whatsr by reason of the investmt of the sd sum of £—— in the pchase of the sd rly shares, or the subseqt retention of the sd investmt, or any pt thof (c). *If the apptmt to T. & U. (the*

Covenant against incumbrances.

Covenant of indemnity in respect of breaches of trust.

(c) Where one of the shares under a settlement or will has been settled by an instrument not condoning a breach of trust previously committed, a covenant of indemnity by some of the persons *sui juris* interested under the sub-settlement should be inserted as follows: "AND THIS INDRE FURTHER WITNETH that, in psuance of the sd agrmt in this behalf, & in conson of the premes, *jt & sevl covts by covtors with trees,* that they the sd covtg pties, & every of them, their, & every of their, hrs, exs, & ads, will at all times hrafter keep indemnified, the sd *trees,* & each of them, their, & each of their, hrs, exs, & ads, & also the este & effects of the sd —— deced, from all actions, pcdgs, claims, & demands, whatsr, on the pt of any pson or psons claimg under the sd indre of settlemt of, &c., *the sub-settlemt,* by reason, or in respt of [the sd investmt in rly shares, or the retention of such investmt, *or as the case may be*], & from all costs, damages, & expses, occasd by any such action, pcdg, claim, or demand." A general covenant of indemnity by

Covenant of indemnity against breach of trust.

PREC. VII.

Proviso when further shares may accrue to the releasing parties.

infants) *was not absolute, so that a further share may accrue to the releg pties, add* PROVD ALWAYS, & it is hby agrd & decld that the rele hinbfe contd shl not extend to any share or shares of the sd trust ppty wch may hrafter accrue to any of the sd pties hto of the first five pts, or their respive exs, ads, or assns, by reason of the sd T. & U., or eir of them, dying witht attaing a vested intt under the sd deed of apptmt, &c. IN WITS, &c. (*a*).

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the beneficiaries (each as to his own share) is sometimes added, in the following form, but this is of little, if any, value, unless it be as a protection to the trustees against the possibility that incumbrances may have been created on some of the shares, of which notice may have been given, but that, owing to a change of trustees or solicitors, or otherwise, such notice has not reached the present trustees. As to the variations in brackets having reference to married women, see p. 408, note (*b*) :

General covenants of indemnity by beneficiaries.

"AND THIS INDRE ALSO WITNETH that, in psuance of the sd agrmt, & in conson of the premes, each of them, the sd, *covtors*, as far as relates to the share to wch he [or she] [or his wife] is, or claims to be, entled in his [or her] own rt [or in rt of his wife] in the sd trust premes, doth hby covt with the sd, *trees*, & each of them, their, & each of their, hrs, exs, & ads, that they, the sd covtg pties, & every of them, their & every of their, hrs, exs, & ads, will, from time to time, & at all times hrafter, keep indemnified, the sd, *trees*, & each of them, their, & each of their, hrs, exs, & ads, & also the este & effects of the sd ——, deced, from all actions, pcdgs, claims, & demands, in respt of the moys, stks, funds, shares, & secs so pd, or transferred by the sd trees, as hinbfe recited, or other the trust este ppty & premes comprd in, or now or at any time subjt to the trusts of the sd indre of settlemt of, &c., or the intt, divds, or income thof, or any pt thof resply, or orwise, under the trusts of the sd indre of settlemt, [or any sale, investmt, paymt, allowce, act, or thing whatsr, at any time made, done, exted, or omitted by the sd trees or tree for the time being of the sd settlemt, or eir or any of them, in or about the exon of the trusts thof, whether hinbfe specifically mentd, or refd to, or not], & from all costs, damages, & expses, to be occasd by any such action, pcdg, claim, or demand, as afsd, or orwise in respt of the premes."

(*a*) If the settlement on K.'s marriage had taken effect after the 4th August, 1894, the entirety, or if that settlement had taken effect before the 5th August, 1894, and the settlement of D.'s share had taken effect after the 4th August, that share, would be liable to settlement estate duty, and the recitals would require to be altered : F. A. 1894, ss. 5, 21 (4).

VIII.

RELEASE *and general* COVENANT *of* INDEMNITY *to* TRUSTEES *of Settlement comprising* PERSONALTY *and* REAL ESTATE *conveyed in* TRUST *for* SALE.

PREC. VIII.

Parties, A., *son,* 1; B. & C., his wife, *daur,* 2; D. & E., *surving trees,* 3. *Recital of convce of real este in trust for sale & settlemt of even date on marre of F. & G. settlg £—— —— Annies, & proceeds of sale of real este on wife & husbd successively for life, with remr as wife shd appt, with remr for chln eqlly at twenty-one, &c., & power of advancemt, & containg covt by L., wife's father, to pay gross sum on his death, with intt in meantime to be held on similar trusts; powers to appt new trees;* AND WHAS the sd G. died on the —— day of —— witht havg exercised the sd power of apptmt by the sd indre of settlemt given to her as afsd; *Death of F., havg made a will apptg A. exor; Probate;* AND WHAS there have been issue of the sd marre betn the sd F. & G., three chln, & no more, namely, the sd A., who has attned the age of twenty-one yrs, the sd C., who intermarried with the sd B. on the —— day of ——, & has since attned that age, & H., who attned the age of twenty-one yrs on the —— day of ——; AND WHAS the sd L. died on, &c., in the lifetime of the sd G., & the sd sum of £—— by the hinbfe recited indre covted to be pd by him the sd L., was on the —— day of —— pd to the sd trees, & invested by them on the —— day of ——, in the pchase of —— debs of £—— each of the —— Rly Co; AND WHAS the intt payable durg the life of the sd L., on the sd ppal sum of £——, & all the intt payable thron after his dece, was duly pd by him or his exor, & was reced by the sd G.; AND WHAS in the yr —— the sum of £——, pt of the sum of £—— —— Annies comprd in the sd indre of settlemt, was, with the consent in writg of the sd F., sold by the sd trees, & the proceeds thof applied for the advancemt of the sd A.; *Death of H., havg made a will bequeathg her residy este,* "wch included her share & intt under the sd settlemt," *to A. & C. eqlly, & apptg A. exor; Death & probate; Deaths of I. & K., two of the trees, & apptmt of D. & E. trees in their place of the settlemt & deed of even date, & transfer of trust este; Death of M.,*

Recitals.

Settlement.

Death of tenants for life.

Family.

Death of wife's father, and payment and investment of sum secured by his covenant.

Advancement of a child.

Real estate not sold.

Conversion of stock by Act of Parliament.

Shares in which estate divisible.

As to share of deceased child.

Income.

Payment of duties and costs.

Valuation of trust property.

the remaing origl tree; AND WHAS the whole of the hds by the sd indre of even date with the sd settlemt conveyed in trust for sale as afsd have been retained unsold; AND WHAS the sd £—— —— Annies were in the yr 1888 converted by Act of Parliamt into £—— $2\frac{3}{4}$ p.c. Consold Stk; AND WHAS under the trusts of the sd indre of settlemt (as hinbfe appears) upon the dece of the sd F., the sd A. became entled in posson to one eql third pt of the sd trust ppty (subjt to bringing into acct the sum of £—— applied for his advancemt as afsd, & to the paymt of duty), & the sd C., or the sd B. in her rt, became entled in posson to anor eql third pt thof (subjt to duty): AND WHAS the funl & testy expses & debts of the sd H. have been fully pd & satisfied, & by virtue of the beqts contd in her sd will, the sd A., and the sd C., [or the sd B. in her rt], are benefly entled in eql shares to the one-third share of the sd H. in the sd trust ppty (subjt to succon duty, & subjt also to the paymt of the duties payable under the will of the sd H.); AND WHAS all the divds & rents of the sd trust ppty up to the death of the sd G., inclusive of the apportioned pt of the divds and rents wch became due after her dece, were duly pd to her or to the sd F., as her admor, & all divds & rents thof subseqtly to such death, & up to the death of the sd F., inclusive of the apportioned pt of the divds & rents accrug after his death, were duly pd to him or the sd A., as his exor, as the sd A. doth hby acknowe; AND WHAS the sum of £——, pt of the sd sum of £—— $2\frac{3}{4}$ p.c. Consold Stk, has been sold by the sd D. & E., & the proceeds thof, togr with the divds & rents, amtg to £——, wch have accrued on the sd trust ppty since the death of the sd F., have been applied in paymt of the duties payable in respt of the sd trust ppty on the death of the sd F., & the costs of & incidental to the preparon & exon of these psnts or orwise relatg to the windg up of the sd trust; AND WHAS all duties payable on the death of the sd H. have been duly pd; AND WHAS the sd hds situate at —— have been valued by —— at the sum of £——, wch sum it has been agrd shl be taken as the value thof for the ppose of the divon of the sd trust ppty; AND WHAS the market value of the sum of £—— $2\frac{3}{4}$ p.c. Consold Stk (being the sum remaing after such sale as afsd), & of the sd £—— Rly Debs at the price of the day is £—— & £—— resply;

AND WHAS it has been agrd that the sd hds & the sum of £—— 2¾ p.c. Consold Stk, wch togr amt in value to the sum of £—— (being the amt of the total share of the sd A. in the sd trust ppty after acctg for the sum of £—— applied for his advancemt as afsd), shl be appropriated to him, & that the sum of £—— like Stk, & the sd sum of £—— Rly Debs, amtg togr in value to the sum of £—— (being the amt of the total share of the sd C. in the sd trust premes), shl be appropriated to her; AND WHAS by an indre bearg even date hwith, & made, &c., the sd hds have been conveyed by the sd D. & E. with the concurrce of the sd B. & C. to the sd A. (*a*); AND WHAS the sd sum of £—— 2¾ p.c. Consold Stk has been transferred by the sd D. & E. to the sd A., & the sd sum of £—— like Stk & £—— Rly Debs have been transferred by the sd D. & E. to the sd B., with the consent of the sd C., as they the sd A., B., & C. do hby acknowe; AND WHAS, bfe the convce & transfers afsd were made, it was agrd that the rele & indemnity hinafter contd shd be given & exted: NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of the premes the sd A. (as well in respt of his benefl intt as in his character of exor of the sd H. & F. resply), & the sd B. & C. do & each of them doth hby rele & dischge the sd D. & E., & each of them, their, & each of their, hrs, exs, & ads, & also the estes & effects of the sd I., K., & M. resply, from the sd respive sums of £—— & £—— 2¾ p.c. Consold Stk, & £—— Rly Debs so transferred to the sd A. & B. resply as afsd, & from the sd hds & the moys to arise from the sale thof, & from all actions, pcdgs, claims, & demands whatsr, for or in respt of the same resply, or the trust ppty comprd in or at any time subjt to the trusts of the sd indre of settlemt or the sd indre of even date thwith, or the divds, intt, rents, or

Agreement for division of estate.

Conveyance of real estate to son.

Transfer of stocks.

Agreement for release.

Release.

(*a*) The election of all the parties to take the property as real estate discharged from the trust for sale would be evidenced by the conveyance, which it seems must be acknowledged by the married woman for that purpose, unless she is entitled for her separate use under the old law, or the M. W. P. A. 1882 (as to which, see p. 89, note); *Franks* v. *Bollans*, L. R. 3 Ch. Ap. 717 (compromised after the hearing before the Lords Justices; see *Re Clinton's Trust*, L. R. 13 Eq. 301). But the allotment of the real estate to some of the beneficiaries would be best effected by the trustees conveying it to them at the valuation price under the trust for sale; which would render the concurrence of the other beneficiaries unnecessary; though it would involve the payment of *ad valorem* stamp duty. See as to the duration and determination of trusts for sale, 32 Sol. J. 729.

Election to take as real estate.

PREC. VIII.

Covenant of indemnity (*b*).

annl produce thof, or anythg in anywise relatg to the trusts of the sd settlemt or the sd indre of even date thwith, or the premes (*a*); *Covt by A., B., & C. agst incumbces*, p. 414: AND THIS INDRE FURTHER WITNETH that in psuance of the sd agrmt & in conson of the premes the sd A. & B. do hby jtly & sevlly covt with the sd D. & E., their exs & ads, & with each of them, his exs & ads, that they the sd covtg pties resply will at all times hrafter effectually keep indemnified the sd D. & E., & each of them, their & each of their, hrs, exs, & ads, agst all actions, pcdgs, claims, & demands on the pt of any pson or psons whomsr, & from all costs, damages, & expses in respt of the trust este & ppty now or at any time comprd in or subjt to the trusts of the sd indre of settlemt, or the divds, intts, rents, or annl produce thof, or any pt thof resply, or anything done or omitted by the sd D. & E., or the sd I., K., & M., or any of them, in the exon of the trusts of the sd indre, or anythg in anywise relatg to the premes. IN WITS, &c.

IX.

PREC. IX.

RELEASE *to the* TRUSTEES *of a* MARRIAGE SETTLEMENT *on the* FINAL DISTRIBUTION *of the trust funds.* A SHORT FORM. *The* DEALINGS *with the trust funds being* SHOWN *by a* SCHEDULE. VARIATIONS *where an* INDEMNITY *is given.*

Recitals.

Settlement.

Parties, A., "& B., *a daur*, his wife," 1; C. & D., *trees of B.'s settlemt*, 2; E., *a son*, 3; F., *a son*, 4; G., *exor of last tenant for life*, 5; K. & L., *trees of settlemt*, 6: WHAS by an indre dated, &c., & made, &c. (being the settlemt made on the marre of the sd M. & N.), it was decld that the sd X. & Y., or other the trees or tree for the time being of the sd indre, shd after the sd marre eir allow the stks, funds, & secs thrin mentd, the parlars whof are specified in the schdle hto, to remain in their

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(*a*) For a fuller form of release, see the last Precedent.

(*b*) As to the insertion of a general covenant of indemnity, see above, p. 415, note.

actual state of investmt, or shd at any time or times, with the consent of the sd M. & N., or of the survor of them, & after the death of such survor, at the discron of the sd trees or tree for the time being, sell the same, but as to certn pts thof, wch were then revonary or contingent, not until after the same shd have fallen into posson, & invest the proceeds in any of the secs thrin mentd, wch included, among others, the sevl secs into wch the investmts of the sd trust premes were from time to time transposed, as appears from the sd schdle hto, & shd, &c., *trusts to pay income to M. & N., & the survor for life, remr for their issue as they or survor shd appt, in default for chln at twenty-one, &c., & hotchpot, advancemt, mtce, & accumulon clauses; Recitals as to issue of marre & marre of daur; Apptmt of K. & L. trees in place of X. & Y. on their retiremt, & transfer of trust este*; *Apptmt of M. & N. of pt of trust funds to B. on her marre, & assnmt thof to C. & D., her trees; Death of M.; Apptmt by N. after M.'s death to E.; Will of N. apptg G. exor, death & probate;*

Explanation of schedule.

AND WHAS the first pt of the schdle hto contains a full & parlar acct & statemt of the trust este & ppty origlly comprd in or subjt to the hinbfe recited indre of settlemt of, &c., & of all sales & transposons of the investmt thof, & of all the rects, paymts, and disbursemts of the sd trees or tree for the time being, in respt of the capl of the sd trust este & premes, & also (since the dece of the sd N.) in respt of the income thof; AND WHAS the second pt of the sd schdle shows the parlars of the trust este & ppty now remaing subjt to the trusts of the sd settlemt, & the mode in which the same is distributable; *Add recitals as to any mres requirg to be specially noticed;*

Approval of accounts.

AND WHAS the sd pties hto of the first five pts have carefully examined the accts contd in the sd schdle hto, & are satisfied thwith;

Application of income.

AND WHAS all income payable to the sd M. durg his life, & since his dece to the sd N., in respt of the sd trust premes, has been duly accted for & pd, as the sd G. doth hby acknowe;

Agreement for distribution and release.

AND WHAS the sd K. & L. have, at the reqt of the sd sevl pties hto of the first four pts, agrd to make the sevl paymts & transfers mentd in the second pt of the sd schdle hto upon havg such rele as is hinafter contd;

Witnesseth.

NOW THIS INDRE WITNETH that in psuance of such agrmt, & in conson of the sevl paymts & transfers mentd in the second pt of the sd schdle havg been made by the sd K. & L., at the reqt

PREC. IX. of the sd sevl pties hto of the first five pts, as they do resply hby acknowe, They, the sd sevl pties hto of the first five pts (*a*), accdg to their sevl & respive rts & intts, do, & every of them doth hby rele the sd K. & L., & also the sd X. & Y., & every of them, their, and every of their hrs, exs, ads, estes & effects, from all actions, pcdgs, claims & demands, in respt of the trust este & ppty comprd in or at any time subjt to the trusts of the sd indre of settlemt of, &c., or any pt thof, or of any of the acts, mres, & things mentd or implied in the sd schdle hto, or orwise in relon to the premes (*b*). IN WITS, &c.

Release.

The Schdle refd to in the above-written indre.

[*Schdle of accts in two pts.*]

X.

PREC. X.

RELEASE *to the* TRUSTEES *of a* WILL *in respect of* SETTLED STOCK SOLD AND PAID *at the request of the beneficiaries* TO TRUSTEES OF A SETTLEMENT. *A concise form.*

PARTIES, A., 1; B., 2; C. & D., 3; E. & F., 4. WHAS the sd E. & F. as trees under the will of K., dated &c. & proved &c., recently sold £—— Stk standg in their names & held under the sd will on trust for paymt of the divds thof to the sd A. durg his life, & subjt thto on trust for the sd B. absolutely, & pd the net proceeds thof, amountg to £——, to the sd C. & D. as trees of an indre &c., whby the sd B. assned to the sd C.

(*a*) As to the trustees of the daughter's settlement joining in the release, see p. 414, note.

Short clause of release and indemnity combined.

(*b*) The following is a very short form of release and indemnity combined: "NOW THIS INDRE WITNETH that in conson of the premes the sd beneficiaries do resply hby rele & covt to keep indemnified the sd trees resply & their respive hrs, exs, & ads from & agst all claims, demands, actions, pcdgs, costs, damages, & expses wch may or might be made or arise in relon to the sd trust premes or any pt thof or anythg done or omitted by the sd trees in respt thof."

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& D. his share of the ppty subjt to the trusts of the sd will, & such sale & paymt were made at the reqt of the sd A., B., C., & D. with the intent to extinguish all intt under the sd will of the sd A. & B. in the same Stk or the proceeds thof, on an agrmt that such release as is hinafter contd shd be extd: NOW THIS INDRE WITNETH that in psuance &c., & in conson of the premes, the sd A., B., C., & D. resply release the sd E. & F., & each of them, from the sd Stk sold as afsd, & the pcds & income thof, & from all intt & pcdgs by reason of such sale & paymt, or orwise in relation to the premes. IN WITS, &c.

XI.

RELEASE *by* RESIDUARY LEGATEES *to* EXECUTORS *and* TRUSTEES *of a* WILL *comprising* REAL *and* PERSONAL *Estate*, EXCEPT *as to* CERTAIN TRUST FUNDS; *a* FUND *being* RETAINED *for the* INDEMNITY *of the Executors, in respect of* LIABILITIES *under* LEASES.

PREC. XI.

PARTIES, A., B., "& C., his wife," D., E., "& F., his wife," *residy legatees & husbds of married women*, 1 (*c*); G. & H., *exs & trees*, 2. *Recite Will givg legacies & containg a genl devise & beqt to G. & H. in trust for conversion, the proceeds to be applied in paymt of funl & testy expses, debts, & legacies, & subjt thto in trust for such of the testor's chln as shd survive him; Diron that daurs' shares shd be held on trusts for the benefit of themselves & their chln, & apptmt of G. & H. exs; Death of testor & probate;* AND WHAS the sd A., C., D., & F. are the only chln of the sd testor who survived him, & they have all attned the age of twenty-one yrs; AND WHAS the sd testor was at his dece seized in fee simple of certn hds & entled to divers leasehd messes & hds, some of wch were held under leases grted to him, the sd testor, & of some of wch he was the assnee, & the sd testor had also acquired other leasehd hds, wch he had disposed of in his lifetime; AND WHAS the sd G. & H. have got in & converted all the psonal este of the sd testor wch was not specifically bequed by his sd

Recitals.

Children.

As to leaseholds.

Administration of personal estate.

(*c*) As to the married women, see p. 408, note.

will, & have pd throut all his funl & testy expses & debts, & all duties payable on his death in respt of his psonal este, & have pd or provd for the pecuniary legacies bequed by his sd will, & the net residue of the sd psonal este amts to £——;

Sale of leasehold estate.

AND WHAS the sd G. & H. have sold the whole of the real este of the sd testor, & after paymt of the costs, chges, & expses of, & incidental to, the sd sale, & all duties payable on his death in respect of his real este, the net proceeds arisg from such sale amted to the sum of £——, makg, with the sd sum of £——, the sum of £——;

Retention of indemnity fund against liabilities under leases.

AND WHAS it is apprehended that the este of the sd testor & the sd G. & H., as his exs may be under a continuing liability in respt of the leasehd hds & ppties wch were held by him as afsd under the covts contd in the respive leases or the assnmts thof to him or in underleases thof, & it has been agrd that the sd G. & H. shd retain out of the sd sum of £—— the sum of £—— wch has been invested by them in the pchase of £—— 2¾ p.c. Consold Stk in their own names as a fund for the ppose of indemnifying & protectg them in respt of such liabilities, leavg in their hands the sum of £——;

Division of estate.

AND WHAS the sd G. & H. have pd one eql fourth pt of the sd sum of £—— to each of them the sd A. & D., as they do resply hby acknowe, & have invested one other fourth pt of the same sum in the pchase of £—— Deb Stk of the —— Rly Co in their own names, to be held upon the trusts in the sd will expd for the benefit of the sd C. & her chln, & have invested the remaing one-fourth pt of the sd sum in the pchase, in their own names, of £—— like Deb Stk, to be held upon the trusts in the sd will expd for the benefit of the sd F. & her chln;

Accounts, &c.

AND WHAS the sd G. & H. have rendered unto the sd sevl psons pties hto of the first pt accts of the psonal este of the sd testor, includg leasehds, & of the sale, conversion, & gettg in thof resply, & of the applicon of the moys arisg from such sale, conversion, & gettg in, & have also duly pd or accted to the sd sevl pties hto of the first pt for all rents & profits arisg from the sd leasehd estes, from the death of the sd testor until the complon of the sd sales thof, & all income wch has accrued from the sd psonal este, as the sd sevl pties hto of the first pt do resply hby declare, & being satisfied with such accts, they have agrd to give to the sd G.

PREC. XI.

Witnesseth.

Release.

Not to extend to funds retained by trustees.

Declaration of trust of indemnity fund (*a*).

& H. such rele as is hinafter contd: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the premes, they, the sd pties hto of the first pt, do & every of them doth, hby rele & for ever dischge the sd G. & H., & each of them, their, & each of their hrs, exs, & ads, from all actions, pcdgs, accts, claims, & demands, for, or in respt of the residy psonal este of the sd testor (includg leasehds), or any pt thof resply, or the moys arisg from the sale, conversion, & gettg in of the same resply, or the rents, profits, divds, intt, or income thof resply [or for or in respt of any sale, conversion, investmt, paymt, applicon, valuon, act, or thing made, done, exted, neglected, or omitted by the sd G. & H., or eir of them, in the admon of the sd este, or the exon of the trusts of the sd will], or for, or in respt of, any other thing in anywise relatg to the premes; PROVD ALWAYS that the rele hinbfe contd shl not extend to the sd respive sums of £—— & £—— Deb Stk of the —— Rly Co retained by the sd trees to be held upon the trusts in the sd will mentd for the benefit of the sd C. & her chln, & the sd F. & her chln resply as afsd, or the divds or income thof resply, or to the sd sum of £—— $2\frac{3}{4}$ p.c. Consold Stk retained as an indemnity fund as hinbfe & hinafter mentd or the income or accumulons thof; AND it is hby agrd & decld that the sd G. & H., their exs, ads, & assns, shl henceforth stand possed of the sd sum of £—— $2\frac{3}{4}$ p.c. Consold Stk invested in their jt names as afsd upon trust eir to retain the investmt thof or at any time to transpose the same or any pt thof into or for any other of the public stks or funds or Governmt secs of the United Kingdom at discron, & upon further trust durg the lives & life of the sd pties hto of the first pt, & the survors & survor of them, & for a period of twenty-one yrs from & after the death of the last survor of them, to pay or

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As to liability of executors under covenants of leases, &c.

(*a*) By s. 27 of Lord St. Leonards' Act (22 & 23 Vict. c. 35), executors and administrators can relieve themselves of liability under leases granted or assigned to the testator or intestate by assigning them to a purchaser after satisfying all liabilities down to the time of the assignment and setting aside a fund to answer any fixed sum agreed to be laid out on the property; they can then safely distribute the estate; but this does not cover the liability under leases assigned by the testator or intestate in his lifetime, nor under covenants for indemnity entered into by him in an assignment of a lease to him, nor under covenants contained in underleases; see *Reilly* v. *Reilly*, 34 Beav. 406. An assignment to a legatee is not an assignment to a purchaser under the Act, *Dodson* v. *Sammell*, 30 L. J. (Ch.) 799. See also above, p. 301, note.

PREC. XI. apply all or any pt of the capl & income of the sd indemnity fund as & when the same shl be required for the pposes hinafter mentd, namely, in satisfon of any liabilities to wch the este of the sd testor may remain & be subjt under the covts contd in the leases under wch the leasehd ppties to wch the sd testor was entled at his dece as afsd, or any other leasehd ppties at any time held by the sd testor may be or have been held, or under the covts contd in any assnmt of any such lease or leases to the sd testor or any underlease or underleases thof, & so as effectually to indemnify the sd G. & H., & their respive exs & ads in respt of all such liabilities, & any expses incurred in respt of any such liabilities, & subjt as afsd, the sd trees shl stand possed of the sd indemnity fund, & the income thof upon the trusts decld by the sd will of the net residue of the psonal este of sd testor, & shl pay or apply the income of the sd fund in the meantime & until the same shl be actually wanted for the ppose of such indemnity to the psons or pson or for the pposes to or for wch the same shl be payable or applicable under such trusts; PROVD ALWAYS & it is hby agrd & decld that notwg the trusts hinbfe contd, the sd trees may at any time in their discron pay & divide to & among the sd pties benefly entled under the sd will any pt of the capl of the sd indemnity fund, the retention whof for the pposes afsd the sd trees may consider to be unnecy. IN WITS, &c.

XII.

PREC. XII.

DEED *of* RELEASE, CONFIRMATION, *and* INDEMNITY *by the Parties* INTERESTED *under a* WILL, *in respect of the* TRUSTEES *having* RETAINED *part of the* REAL ESTATE UNSOLD, *and in respect of a* SALE *to a* SON *of the* TESTATOR *at a* VALUATION, *and* RELEASE *by the* WIDOW *of her* LIFE INTEREST *in the Purchase-money to the Son.*

PARTIES, A., *widow*, 1; B., C., D., & E., his wife, F., & G., his wife, *chln, & husbds of married daus of A.* (*a*), 2; the sd B., *son*,

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(*a*) As to the married women, see p. 408, note.

3; L., M., & N., *trees*, 4. *Recite Will containg residy devise & beqt in trust for sale & conversion, & trust of proceeds for A. for life, remr to chln at twenty-one, &c.; Death & probate; State of family; Testor's title to este*; AND WHAS after the death of the sd testor it was considered that an immediate sale of the sd este was undesirable, & it was accdly arranged, with the approbon & consent of all the sd pties hto of the first and second pts, that the same shd remain unsold, & shd be cultivated & kept up at the expse of the sd testor's este; AND WHAS it has been lately agrd betn the sd trees & the sd B., with the approbon & consent of all the sd other pties hto of the first and second pts, that the sd este shd be sold to the sd B. for the sum of £——, being the sum at wch the same has been valued by X. & Y.; AND WHAS the sd sale is intd to be forthwith carried into effect by a pper convce; AND WHAS the sd A., at the reqt of the sd B., & in order to provide him with the necy capl for carrying on the cultivon of the sd este & his other requiremts, has agrd to rele her life intt in the sd sum of £—— constitutg the pchase-moy of the sd este in mner hinafter mentd, to the intent that such sum may be forthwith pd or transferred by the sd trees to the sd B., in part satisfon of his share in the sd residy este, subjt to the dedon of the [legacy & succon duties payable in respt thof, & the] costs of & incidental to these psnts & the carrying out of the sd arrangemt, wch it has been agrd shl be pd throut; AND WHAS the sd pties hto of the first & second pts have resply agrd to exte such confirmon & rele, & the same pties, other than the sd E. & G., have resply agrd to enter into such covts of indemnity as are hinafter contd: NOW THIS INDRE WITNETH that, in conson of the premes, the sd pties hto of the first & second pts, accdg to their sevl estes & intts, do resply hby ratify & confirm the sd sale, or intd sale, of the sd este to the sd B., & do hby authorise & empower the sd trees to carry such sale into effect, & do resply hby rele & dischge the sd L., M., & N., & every of them, their & every of their, hrs, exs, & ads, from all claims, demands, actions, & pcdgs, in respt of the sd este havg been retained unsold as afsd, or any loss arisg from such retention, or in respt of the sd sale of the sd este to the sd B.: AND EACH of them the sd pties hto of the first & second pts, other than the sd E. & G., doth hby covt with the sd L., M., & N. resply, & their respive exs & ads, that they the sd covtg

Recitals.

That estate has been retained unsold.

Agreement for sale to son.

Agreement for release of life estate.

Agreement for release, &c., to trustees.

Witnesseth.

Release to trustees.

Covenan of indemnity.

PREC. XII.

pties resply & their respive hrs, exs, & ads, will at all times keep the sd L., M., & N., & every of them, & their & every of their hrs, exs, & ads, effectually indemnified agst all actions, pcdgs, claims, & demands on the pt of any pson or psons, & in parlar on the pt of the sd E. & G., or eir of them, or any pson or psons claimg under them or eir of them, & from all costs, damages, & expses, for or in respt of the sd este havg been retained unsold as afsd, or in respt of the sd sale thof to the sd B., or in relon to any of the mres afsd: AND THIS INDRE ALSO WITNETH that the sd A. doth hby rele & surrender to the sd B. all the life este & intt of the sd A. in the sd sum of £—— arisg from the sale of the sd este to the sd B., & the intt & income thof, to the intent that such sum shl forthwith, or as soon as circes will admit, be pd or transferred by the sd trees to the sd B., his exs, or ads, in pt satisfon of his share in the sd residy este, subjt to & after dedon & paymt throut of the legacy duty payable in respt thof, & the costs hinbfe mentd. IN WITS, &c. (*a*).

Further witnesseth.

Release of life interest.

XIII.

PREC. XIII.

RELEASE *and* INDEMNITY *by beneficiaries under a* WILL *to the* EXECUTORS *in respect of a payment made by way of* COMPROMISE *of a claim against the Estate* (*b*). SOME *of the beneficiaries being* INFANTS *who are made* PARTIES, *that they may execute when of age* (*c*).

PARTIES, adult beneficiaries, 1; *infant beneficiaries*, 2; *exs*, 3. *Recitals as to compromise;* AND WHAS the sd terms were arranged & the sd paymt made with the approbon of the sd pties hto of the first pt, who were consulted in the course of the sd negotions, & who entirely concurred in the expediency of

Recitals.

Arrangement.

(*a*) This deed must be acknowledged by E. and G., unless they are entitled for their separate use. See p. 399, note.

(*b*) As to the power of executors, administrators and trustees to compromise, &c., see the T. A. 1893, s. 21 (replacing and extending s. 37 of the C. A. 1881).

(*c*) See also in Vol. I., p. 525, note, a form of covenant that an infant shall convey when of age.

carrying out the sd terms & recommended the adoption thof, & agrd in respt thof to exte such rele & covt of indemnity as is hinafter contd;

As to infants.

AND WHAS the names of the sd, *infants*, have been inserted as pties to these psnts of the second pt, to the intent that they may, if they shl resply think fit, exte the same on their resply attaing majority, but the effect of the exon of these psnts by the sd adult pties hto or any of them as bindg each such respive pty shl not in any way be prejudiced by the non-exon of these psnts by the sd infants or eir of them or by any other pson hrin named as a pty to these psnts (*d*):

Witnesseth.

Release.

NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the premes the sd sevl psons hinbfe named as pties of the first & second pts, do & each & every of them doth hby rele the sd pties hto of the third pt, & each of them, their & each of their, hrs, exs, & ads, estes & effects from all actions, suits, accts, claims, & demands for or in respt of the sd arrangemt by way of compromise or the paymt of the sd sum of £—— as afsd, or in any mner relatg thto, or to the premes:

Further witnesseth.

Covenant of indemnity.

AND THIS INDRE ALSO WITNETH that in psuance of the sd agrmt & in conson of the premes, each of them the sd sevl psons hinbfe named as pties hto of the first & second pts doth hby covt with the sd pties hto of the third pt, & each of them, their & each of their exs & ads, that they the sd sevl covtg pties or their respive hrs, exs, or ads, or some or one of them, will at all times hrafter keep indemnified the sd pties hto of the third pt, & each of them, their & each of their, hrs, exs, & ads, este & effects agst all actions, suits, accts, claims, & demands incurred or sustained by reason of the adoption by them the sd pties hto of the third part of the sd arrangemt by way of compromise, or the paymt of the sd sum of £—— as afsd, or in any mner relatg thto, or to the premes, & agst all damages, losses, costs, & expses whatsr, conseqtial upon or incidental to any such action, suit, acct, claim, or demand. IN WITS, &c.

Effect of non-execution by some of parties.

(*d*) Unless otherwise provided, the non-execution of a deed, or the execution without binding effect, by parties whose execution was contemplated would relieve the parties executing from their obligation; *Peto* v. *P.*, 16 Sim. 590; *Bolitho* v. *Hillyar*, 34 Beav. 180: and see 1 White & Tudor L. C. 245; 30 Sol. J. 668. But subsequent execution contemplated by the deed does not affect its validity, *In re Batten*, 22 Q. B. D. 685. Where persons claim under a deed they cannot refuse to abide by all the provisions of it, Elph. Introd. 152.

XIV.

PREC. XIV.

RELEASE *to* ADMINISTRATOR *of Intestate, the* NEXT *of* KIN *being the* SON *(and administrator) of the Intestate, and a* DAUGHTER *whose* SHARE *is in* SETTLEMENT, *in respect of Personal Estate.*

Recitals.
Death, &c.
Administration.
Particulars of personal estate.
Sale of stock.
Sale of leasehold.
Income.
Payments made.

PARTIES, A. & B., his wife, 1; C., D., & E., 2; F., 3; WHAS X., late of, &c., died on the —— day of —— intestate & a widower, leavg the sd B. & F., his only chln & next of kin; AND WHAS lres of admon of the psonal este & effects of the sd X., were on the —— day of —— grted out of the —— District Registry of the Probate Divon to the sd F.; AND WHAS the psonal este of the sd X. consisted of the sevl stks, shares, & secs, set forth in the schdle hrunder written, of a leasehd messe, lands, & hds, known as, &c., & situate, &c., togr with the furniture & effects in & about the same, & of the moys & debts (amtg in the whole to £——) wch have been reced by the sd F., the parlars whof are set forth in the sd schdle; AND WHAS the sd F. as such admor as afsd has sold the sum of £—— Stk, formg pt of the este of the sd X., for the sum of £——, & has invested the sum of £——, pt thof, in the pchase of —— Debs of £—— each in the —— Rly Co; AND WHAS the sd F. has also sold the sd leasehd messe & premes for the sum of £——, & a portion of the sd furniture & effects for the sum of £——, makg, with the moys hinbfe mentd to have been reced by him & not to have been re-invested, the sum of £——, being the full amt of moy wch has come to the hands of the sd F. as such admor as afsd, exclusive of income; AND WHAS the sd F. has reced divds, rents, & income in respt of the sd este to the amt of £—— in the whole makg, with the sd last-mentd sum, the sum of £——; AND WHAS the sd F. has pd & dischged all the debts, funl, & admon expses of the sd X., & the rent payable in respt of the sd leasehd premes, & the duties payable on the death of the sd X., in respt of his psonal este, & the expses of the sale of the sd leasehd premes, wch paymts amt in the whole to the sum of £——, leavg a cash balce of £—— in the hands of the sd F., as such admor as afsd; *Recite settlemt on the marre of A. & B., of wch C., D., & E.,* Division of stocks, &c.

Furniture, &c.

Transfer to trustees.

Costs, &c.

Cash balance.

Accounts.

Agreement for release.

Witnesseth.

Release.

are trees, containg a provon for settlemt of after-acquired ppty of B.; AND WHAS the sd F., with the privity & consent of the sd A. & B., & also of the sd C., D., & E., has set apt such portions of the sd stks, shares & secs as are mentd in the —— column of the sd schdle hto as the share of the sd B., & the value of wch amted at the time of the approprion thof to £——, & retained for his own benefit such portions thof as are mentd in the —— column of the sd schdle, the value of such last-mentd portion amtg at the period afsd to £——; AND WHAS the sd F. has divided the unsold portion of the sd furniture & effects betn the sd B. & himself, the value of the portion appropriated to the sd B. being £——, & of the portion appropriated to the sd F. £——, accdg to the valuon thof resply made by Mr. ——; AND WHAS the stks, shares, & secs appropriated in respt of the share of the sd B. as afsd, have been transferred by the sd F. to the sd C., D., & E., as trees of the sd settlemt; AND WHAS the costs of & incidental to these psnts have been pd out of the afsd cash balce in the hands of the sd F., leavg the sum of £——, a moiety whof, amtg to £——, added to the value of the stks, shares, & secs, & the furniture & effects appropriated in respt of the share of the sd B., constitutes the moiety of the sd B. of the este of the sd X.; AND WHAS the sd last-mentd sum of cash has been pd to the sd C., D., & E., as such trees as afsd: AND WHAS the accts of the sd F., as such admor as afsd, have been submitted as well to the sd A. & B. as to the sd C., D., & E., for examinon, & have been approved of by them; AND WHAS for the greater satisfon of the sd F., the sd pties hto of the first & second pts have agrd to exte to him the rele hinafter contd: NOW THIS INDRE WITNETH that in psuance of such agrmt, the sd pties hto of the first & second (*a*) pts, do & each & every of them doth hby rele & dischge the sd F., his hrs, exs, & ads, from all actions, pcdgs, accts, claims, & demands whatsr, for or on acct of the este & effects of the sd X. deced, or the admon thof, or the conversion, sale, applicon, investmt, valuon, apportionmt, approprion, & distribon thof, or of the proceeds thof, or for or in respt of the divds,

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(*a*) As to the trustees of the daughter's settlement joining in the release, see p. 414, note.

PREC. XIV. rents, & income thof, or any other mre or thing relatg to the premes. IN WITS, &c.

The Schdle above refd to.

[*Schdle.*]

XV.

PREC. XV.

RELEASE *of* GENERAL *testamentary* POWER *of appointment* (*a*).

Recitals. *Deed poll by A. Recite will of X. bequeathg legacy in trust for A. for life, remr to her issue, in default of issue as she may by will appt, in default for her exs & ads. That she has never had any issue & is past age of child-beary:* AND WHAS the sd A. has determined to rele the power of apptmt so vested in her by the sd will of the sd X. over the sd legacy or sum of £—— in mner hinafter appearg; Witnesseth. NOW THESE PSNTS WITS that in psuance of such determon Release. she the sd A. doth hby rele & for ever dischge the sd legacy or sum of £—— from the power by the sd will of the sd X. given to her to appt the same by will to the intent that the sd legacy or sum of £—— may henceforth be absolutely dischged from the sd power of apptmt, & that she the sd A. may be absolutely precluded from exercisg the same power, & that the sd legacy or sum may devolve upon & become vested in the sd A., her exs & ads (*b*) accdg to the provons in the sd will contd in default of apptmt thof. IN WITS, &c.

(*a*) As to the release of powers, see the C. A. 1881, s. 52; Farwell, Pow. Ch. II.; and the note to the next Precedent. It is established (independently of the late Act), that a *general* testamentary power can be released by deed, *Walmsley* v. *Jowett*, 23 L. J. Ch. 425. As to the release of a special power, see *Re Radcliffe*, [1892] 1 Ch. 227; *Re Somes*, [1896] 1 Ch. 250.

(*b*) See 3 Dav. Prec., pt. 1, p. 185, note, as to the persons entitled under this ultimate trust. Elph. Interpretation, 312.

XVI.

RELEASE *of a* POWER *to* JOINTURE (*c*).

PREC. XVI.

PARTIES, A., *tenant for life & donee of power*, 1; B., *revoner*, 2. WHAS under or by virtue of an indre dated, &c., *the settlemt*, & of an indre dated, &c., *a disentailg deed*, & of the events & mres recited mentd or refd to in the sd last-mentd indre, the sd A. is tenant for life of certn estes & hds, situate in the parishes of ——, in the coy of ——, with remr to the sd B. in fee simple, subjt to a power by the sd indre of settlemt given or reserved to the sd A. by deed or will to chge the sd hds, or any pt thof, with a rent-chge not exceedg £—— p.a. in favour of any wife who may survive him, durg her life, by way of jture, & to limit or create the usual powers & remedies, & a term of yrs for securg the same; AND WHAS it has been agrd betn the sd A. & B., that in conson of, &c., *state conson*, the sd A. shd rele the sd power of jturg in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the premes, the sd A. doth hby absolutely rele unto the sd B., his hrs & assns, the sd power of jturg by the sd indre of settlemt given or reserved to the sd A. as afsd, to the intent that the same shl henceforth be absolutely extinguished & cease to be exercisable. IN WITS, &c.

Recitals.

Settlement and disentailing deed.

Agreement.

Witnesseth.

Release.

(*c*) See the references in the note to the last Precedent as to the release of powers. It appears to be established (independently of the C. A. 1881, s. 52), that a power of jointuring a wife or charging portions for children may be released; see Vaizey on Settlements, p. 1496, and cases in notes (*b*) and (*c*); and that the validity of a release of or covenant not to exercise such a power (whether exercisable by deed or by will only seems immaterial) is not open to any doubt, on the score of its being fiduciary in its nature. The release of a power to make a settlement on a future marriage stands on the same footing. The sole fact that the release of a special power of appointment results in a benefit to the donee does not render the release void; *Re Somes*, [1896] 1 Ch. 250.

As to release of powers of jointuring, &c.

XVII.

PREC. XVII.

RELEASE *by way of* COVENANT NOT TO SUE, *and* COMPROMISE, *between Debtor and Creditor, with Provisions as to* JUDGMENT *being given by Consent as* SECURITY *for Payment by Instalments, and clause* RESERVING *rights against* SURETIES (*a*).

Parties. Recitals. Indebtedness. Agreement for compromise. And as to judgment. As to sureties. Witnesseth.

PARTIES, A., 1; B., 2. WHAS divers pecuniary transons have taken place betn the pties hto in respt whof the sd B. is indebted to the sd A. (as is admitted) to the amt of £—— on balce of acct; AND WHAS the sd B., being wholly unable to pay the sd debt in full, it has been agrd that he shl pay to the sd A. the sum of £—— on the exon of these psnts in pt satisfon thof, & that he shl also pay to him a further sum of £—— by instalmts of £—— p.a. for a period of —— yrs as hinafter provd, & that the sd A. shl accept such paymts by way of compromise & in satisfon of all claims agst the sd B., subjt as hinafter provd: AND WHAS it was a further pt of the sd arrangemt for a compromise that an order shd be made by consent in an action in the Queen's Bench Divon of the High Ct of Justice in wch the sd A. is plt & the sd B. is deft, to enter up judgmt in favour of the sd A. agst the sd B. for the sum of £——, but that such judgmt shl not be entd up unless default shl be made in paymt of the sd annl sum as hinafter provd; AND WHAS other psons or companies are or may be liable to the sd A. on bills, notes, bonds, or orwise, as sureties, guarantors, or jt debtors, or orwise, for the paymt of portions of the sd aggregate debt of £—— or the intt thon, & it is not intd that these psnts shl prejudice the rts of the sd A., his exs or ads, agst such other psons or companies or any of them: NOW THIS INDRE WITNETH that in conson of the sum of £—— on the exon

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As to covenant not to sue. As to reserving rights against sureties. As to order by consent to enter judgment.

(*a*) As to the release taking the form of a covenant not to sue in order to preclude any question as to the debt being extinguished, where it is to revive in case of default against the principal debtor, and is to remain in force against sureties and as to reserving rights against sureties, see 2 Dav. Prec., pt. 2, pp. 503—5, note; see also generally as to the law of principal and surety, 2 White & T. L. C. Eq., notes to *Rees* v. *Berrington*, 568 *et seq.;* Goodeve P. P. 156 *et seq.*

As to an order by consent to enter up judgment, which must be filed within twenty-one days under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 27, see the Annual Practice, p. 575.

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hrof pd by the sd B. to the sd A. (the rect whof is hby acknowed), & of the covt of the sd B., hinafter contd for paymt of the sd annl sum, the sd A. hby covts with the sd B., that he the sd A. will accept the sd sum of £——, & the annual sum hinafter covtd to be pd (subjt as hinafter mentd), in full dischge & satisfon of all claims & demands wch the sd A. now has agst the sd B. in respt of the transons & mres afsd, or on any other acct whatever; AND further, that unless default shl be made in paymt of the sd annl sum as hinafter provd, he the sd A. will not at any time hrafter bring or take any action or pcdg whatsr agst the sd B., his hrs, exs, or ads, in respt of any such claims or demands as afsd, & that except in case of such default as afsd, the sd A., his exs or ads, will not enter up judgmt upon or take any pcdgs for enforcg the sd order other than filg the same; AND in conson of the premes the sd B. hby covts with the sd A., *covt for paymt of annl sum;* PROVD & it is exply agrd that in case any [qtrly] instalmt of the sd annl sum shl at any time be in arrear & unpd for thirty days after the same shl have become due (in wch respt time shl be of the essce of this contract), then & in any such case, & although the sd A., his exs or ads, shl have accepted paymt of any previous instalmt of the sd anny after the expiron of such thirty days, all the rts of the sd A., his exs or ads, agst the sd B., his exs or ads, in respt of his now existg indebtedness, shl revive to the full extent, & he & they shl be thrupon entled notwg the covt on his pt hinbfe contd, to enter up judgmt for the sd sum of £——, & issue exon upon & take all necy pcdgs for enforcg the same, after givg credit for the sd sum of £—— pd on the exon hrof, & any paymts wch may have been made in respt of the sd annl sum; PROVD also that nothg hrin contd shl in anywise prejudice or affect any rts or remedies wch the sd A., his exs or ads, has or may have agst any pson or psons or co who may be liable as surety, guarantor, jt debtor, or orwise for the paymt of any moys formg pt of the aggregate debt owing by the sd B. to the sd A. as afsd, under any bill, note, bond, or other instrumt or orwise howsoever. IN WITS, &c.

Acceptance.

Covenant not to sue.

Covenant to pay annuity.

Provision for default.

Reservation of rights against sureties.

XVIII.

PREC. XVIII.

RELEASE *by* CREDITORS *to* DEBTOR *under a Composition effected* WITHOUT RECOURSE *to the* BANKRUPTCY *Acts* (*a*).

THIS INDRE, &c., BETN the sevl psons whose names and descriptions are contd in the schdle hto (hinafter called the credors) of the one pt, & A., of, &c., of the other pt: WHAS the sd A. is indebted to each of the credors in the sum written opposite to his or her name in the schdle hto; AND WHAS the credors have agrd to accept a composon of —— shillings in the pound in full dischge of their sd debts; NOW THIS INDRE WITNETH, & it is hby mutually agrd & decld as follows:—

Recitals.

Witnesseth.

Composition and release.

1. THE SD A. shl, on or bfe the —— day of —— next, pay to each of the credors who shl exte thse psnts bfe that day, a composon of —— shillings in the pound on his or her sd debt, wch they hby agree to accept in full satisfon & dischge of their sd respive debts; And in case such composon shl be duly pd each of them, the credors, doth hby rele the sd A., his hrs, exs, & ads, este & effects from his or her debt, & doth agree that such rele shl be bindg & effectual, although some of the credors of the sd A. may not exte these psnts (*b*), & although the credors who shl not exte the same, or any of them, shl rece paymt in full.

Proviso in event of bankruptcy.

2. PROVD ALWAYS that in case the sd A. shl bfe the —— day of —— have a receivg order in bkptcy made agst him, or in case he shl not on or bfe the sd —— day of —— pay to each

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As to composition deeds with creditors.

(*a*) This deed (i.) will not bind dissentient creditors, for which purpose proceedings must be taken under the Bankruptcy Acts, 1883 and 1890; (ii.) is subject to an implied condition (if not expressed as in this Precedent) that it shall not take effect if bankruptcy supervenes, *In re Stephenson*, 20 Q. B. D. 540; (iii.) must be registered under the Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), or will be void; and (iv.) must be registered under the Land Charges Act, 1888 (51 & 52 Vict. c. 51), s. 9, to be valid against purchasers of land. Execution by creditors after registration does not affect the validity of the registration, nor of the deed itself, as to which see *Re Batten*, 22 Q. B. D. 685. A deed of arrangement for the benefit of particular creditors, as distinguished from creditors generally, does not require registration under the Act of 1887; *Re Samson & Schreiber's Contract*, 39 Sol. J. 504.

(*b*) See p. 429, note.

of the credors who shl exte these psnts bfe that day, the sd composon of —— shillings in the pound on his or her debt as hinbfe is provd, then these psnts shl be void. IN WITS, &c.

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The Schdle above refd to.

Name of Creditor.	Address, &c.	Debt.	Amount of composition.	Signature and seal of Creditor.	Witness to execution by Creditor.

XIX.

MUTUAL RELEASE *by* THREE PERSONS.

PREC. XIX.

PARTIES, A., 1; B., 2; C. 3. WITNETH that every one & every two of them, the sd A., B., & C., doth & do hby rele the others, & each of the others of them, their & his hrs, exs, ads, & assns, & their & his estes & effects, from all sums of moy, accts, contracts, agrmts, covts, bonds, actions, pcdgs, claims, & demands whatsr, wch any one or any two of them, the sd A., B., & C., now hath or have, or at any time htofore hath or have had agst the others, or eir of the others of them, for or by reason or in respt of any act, mre, cause, or thing whatsr, up to the day of the date of these psnts. IN WITS, &c.

SEPARATION DEEDS.

I.

PREC. I.

SEPARATION DEED *between* HUSBAND *and* WIFE *containing* VARIOUS PROVISIONS (*a*).

Recitals. Agreement for separation. Children. As to wife's realty and leaseholds. Agreement by trustees to join. Witnesseth.

PARTIES, A., *husbd*, 1; B., *wife*, 2; C. & D., *trees*, 3: WHAS unhappy diffces have arisen betn the sd A. & B., by reason whof they have agrd [by mutual consent, but at the reqt of the sd A.] to live septe & apt from each other for the future, and to enter into the arrangemt hinafter contd; AND WHAS the sd A. has issue by the sd B. —— chln, that is to say, *state names & ages of the chln;* [AND WHAS the sd B. [or the sd A. in her rt] is entled to the real & leasehd hds hinafter descd, wch, it has been agrd, shl be grted & assned in mner hinafter expd] (*b*); AND WHAS the sd C. & D. have, at the reqt of the sd B., agrd to act as trees for the ppose of the arrangemt hby made, & also to enter into the covts & obligons hinafter contd: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & for the consons hrin appearg, the sd A., so far as the agrmts & provons hinafter contd are, or ought to be pformed or observed by him or his hrs, exs, or ads, doth hby covt with the sd B. (*c*), & also

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(*a*) As to separation deeds generally, see 5 Dav. Prec., pt. 2, p. 667 *et seq.* Pollock on Contracts, Vaizey on Settlements, chap. 18; 1 White & T. L. C., note to *Stapilton* v. *Stapilton*, p. 229. This Precedent contains various alternative provisions adapted to different cases. As to the introduction of trustees, see note (*c*), *infra.*

(*b*) See *infra*, p. 441, notes.

As to covenants by wife.

(*c*) Under the law prior to 1883, it was necessary that the covenants of the husband and wife for each other's benefit should be entered into with trustees, and the wife's covenants had no legal force except as binding her separate estate in equity, and except as to the covenant not to sue for a divorce, &c.; but since, under the M. W. P. A. 1882, s. 1, every married woman may now contract as a *feme sole*, and this enables her to enter into contracts with her husband as well as third parties (see ss. 12 and 13, *Butler* v. *Butler*, 14 septely with the sd C. & D., [& the sd B., so far as the agrmts & provons hinafter contd are, or ought to be pformed or observed by her or her hrs, exs, or ads, doth hby covt with the sd A. (*d*), & also septely with the sd C. & D.], And the sd C. & D. resply, so far as the agrmts & provons hinafter contd are, or ought to be pformed or observed by the sd B., or the sd C. & D., or their respive hrs, exs, or ads, or any of them, do hby covt with the sd A. in mner follg, that is to say:—

Liberty to wife to live apart from husband.

1. IT SHL BE LFUL for the sd B., at all times hrafter, to live septe & apt from the sd A., & free from his marital control & authority, as if she were sole & unmarried, & to reside from time to time at such place [& to carry on such trade, business, or occupon], as she may think pper, witht any interferce whatever on the pt of the sd A.

Husband and wife not to molest, &c., each other.

2. NEIR OF THEM, the sd A. & B., shl molest the other of them [or any member or members of his or her family], or any pson or psons with whom he or she may reside, or require or compel or endeavour to compel the other of them to cohabit or dwell with him or her by any legal pcdgs for restiton of conjugal rts or orwise howsr (*e*).

Not to take proceedings for a divorce, &c. (*e*).

3. NEIR OF THEM, the sd A. & B., shl take any pcdgs agst the other of them to obtain a divorce or judicial separon in respt of any misconduct wch has htofore taken place, or is alleged to have taken place, on the pt of the other of them.

Husband to pay

4. THE SD A. will & shl, durg the jt lives of himself & the

Q. B. D. 831, 16 Q. B. D. 374), it seems proper that the husband and wife should each covenant with the other as well as with the trustee; and as to the wife's power to agree without a trustee, see *Mc Gregor* v. *Mc Gregor*, 21 Q. B. D. 424; *Sweet* v. *Sweet*, [1895] 1 Q. B. 12. But the intervention of trustees, though not legally necessary, will be practically desirable in most cases. As to the effect of the wife's contracts, see the Act, s. 1, as amended by the M. W. P. A. 1893 (56 & 57 Vict. c. 63), s. 1.

(*d*) See note (*c*), p. 438.

As to covenant not to sue for divorce.

(*e*) Such a covenant is a bar to a suit, *Marshall* v. *Marshall*, 5 P. D. 19; *Clark* v. *Clark*, 10 P. D. 188; *Aldridge* v. *Aldridge*, 13 P. D. 210 (but cf. *Cahill* v. *Cahill*, 8 App. Cas. 420), and is necessary in order to bar a suit, *Moore* v. *Moore*, 12 P. D. 193; but it does not amount to condonation, so as to prevent previous misconduct being pleaded in answer to a suit for divorce in respect of misconduct by the other party occurring after the date of the deed, *Gooch* v. *Gooch*, [1893] P. D. 99. See the full form of clause expressly condoning prior misconduct in *Rose* v. *Rose*, 7 P. D. 225. Taking proceedings for a foreign divorce is a breach of the covenant not to molest; *Hunt* v. *Hunt*, (1897) 2 Q. B. 304.

annuity to trustees for wife (*a*).

sd B., if the sd B. [shl remain chaste (*b*), &] shl continue to pform & observe the stipulons hrin contd, & on her pt to be pformed or observed, pay to the sd trees or tree the clear annl sum of £——, in trust for the sd B. as her septe este, & in the event of the sd B. survivg the sd A. & not havg incurred a forfeiture of the sd anny in his lifetime, the same shl continue to be pd by his repves durg the remr of the life of the sd B. The sd anny shl be considered as accrug from day to day, but shl be pd in advce (*c*) by eql qtrly paymts on the usual qtr days, the first paymt to be made on the —— day of —— next, but no allowce or return of moy shl be made in respt of anythg wch may have been once pd under the psnt clause if the sd annl sum shl cease on any other day than one of the sd qtrly days, & the sd B. shl not have power durg her coverture to anticipate the same.

Wife to maintain herself.

5. THE SD B. shl out of the provon made for her by these psnts or orwise provide & pay for all such necy & other board, lodgg, clothg [ornamts, medical attendce, comforts, recreation], & things whatsr as she may now or hrafter require or obtain, AND shl in all respts support & maintain herself.

Husband to pay gross sum to trustees.

[6. *Covt by A. to pay £—— to trees on demand, with intt in the meantime at —— p.c. p.a. to be held in trust to invest & vary investmts, & to pay income to B. durg jt lives for septe*

(*a*) See *infra*, clauses 17 and 18. As to the effect of a subsequent decree of divorce or judicial separation on this covenant, see *Bishop* v. *Bishop*, [1897] P. 138, discussed 41 Sol. J. 449. As to the stamp in respect of this covenant, see *Lewis* v. *Commissioners, &c.*, [1898] 2 Q. B. 290.

As to annuity to wife.

(*b*) In the absence of such a provision, the husband would be liable to continue the annuity, notwithstanding the subsequent adultery of the wife, *Sweet* v. *Sweet*, [1895] 1 Q. B. 12. This has been held not to be a usual provision in a separation deed, *Hart* v. *Hart*, 18 Ch. D. 670; see also as to the construction of such a covenant, *Stogdon* v. *Lee*, [1891] 1 Q. B. 661. As to the effect of the covenant on the right to alimony or an allowance pending or after a suit for divorce, see *Powell* v. *Powell*, L. R. 3 P. & D. 55, 186; *Benyon* v. *Benyon*, 1 P. D. 447; *Morrall* v. *Morrall*, 6 P. D. 98; *Wood* v. *Wood*, 57 L. J. (Ch.) 1; and as to proof in bankruptcy under such a covenant, see *In re Wood*, L. R. 9 Ch. Ap. 670; *Ex parte Neal*, 14 Ch. D. 579. Where the parties were living apart under a separation deed, the refusal of the husband to resume cohabitation upon the offer of the wife was held not to constitute desertion, so as to entitle her to an order for maintenance under 49 & 50 Vict. c. 52, s. 1; *Reg.* v. *Leresche*, [1891] 2 Q. B. 418.

(*c*) On the death of the wife no question as to apportionment arises if the annuity is payable in advance; *Trevalion* v. *Anderton*, 66 L. J. Q. B. 230. S. C. on app., 489.

use, witht power of anticipon, & after death of A. or B. in trust for survor absolutely ; Provo, that if, & so long as A. shl, durg jt lives, punctually pay to trees the intt on the £——, then the trees shl not compel paymt of the £——. See infra, SETTLEMTS, PSONAL.]

Wearing apparel, &c., of wife to belong to her as her separate estate (*d*).

7. ALL THE wearg apparel & psonal ornamts of the sd B., & all moveable psonal ppty belongg to the sd A. now in her posson, shl belong to the sd B. as her septe este independently of the sd A.

Further testatum: conveyance of freehold and leasehold estates of wife to her as her separate estate (*e*).

[8. AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & in conson of the premes, the sd B., with the concurrce of the sd A., doth hby grt, & the sd A. doth hby grt & confirm, unto the sd C. & D., *Freehd Pcels, Vol. I.,* p. 385 ; TO HOLD the same UNTO the sd C. & D., & their hrs, TO THE USE of the sd B., her hrs & assns, as her septe este, independently of the sd A.; *Add, if necy, in a septe testatum, an assnmt of wife's leasehds & choses in action not reduced*

Provisions as to wife's property.

(*d*) The provisions as regards the wife's property will depend on circumstances. If the parties were married after 1882, the wife is, by the M. W. P. A. 1882, ss. 1 and 2, made a *feme sole* as to all her property existing at the time of the marriage or afterwards acquired ; and by ss. 1 and 5 of the Act, a woman married before 1883 is in the same position as to all property acquired by her after 1882 (see *Reid* v. *Reid*, 31 Ch. D. 402). As to the wife's separate property, whether belonging to her as a *feme sole* under the Act, or settled to her separate use under the old law, no provision is required for her protection, except possibly, as to the latter, a clause divesting the husband of the legal estate in real or leasehold property, so as to enable her to dispose of the legal as well as beneficial interest without his concurrence. But it may be proper to add a clause (which seems free from any legal objection grounded on such cases as *Holmes* v. *Godson*, 8 De G. M. & G. 152, as it is conceived that the husband can validly contract himself out of his common law rights), excluding the husband from taking any interest after his wife's death, in the event of her predeceasing him without having disposed of the property in her lifetime or by will (see *Allen* v. *Humphrys*, 8 P. D. 16) ; since the separate use, whether under the old law or under the M. W. P. Act, does not exclude the husband's marital right by survivorship, or as the wife's administrator, to her leaseholds and personalty, and to an estate by the curtesy in her freeholds, see *infra*, p. 483, note.

As to wife's property.

(*e*) See the last note. This clause is adapted to the case where the property is not the wife's separate estate, or was settled to her separate use under the old law in such form that the legal estate could not be conveyed without the husband's concurrence (see Vol. I., p. 499, note (*f*)). The common law doctrine that a husband cannot convey property direct to his wife was removed as to freeholds and choses in action by the C. A. 1881, s. 50 ; and the enactment in the M. W. P. A. 1882, s. 1, by which every married woman is enabled to acquire and hold property as a *feme sole*, may have the effect of abolishing

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into posson to the trees, habendum, to the sd C. & D., in trust for the sd B., as her septe este, independently of the sd A.]

If wife die first, husband to be excluded (*a*).

9. On the death of the sd B. in the lifetime of the sd A., all her septe este, whether real or psonal, wch she shl not have disposed of in her lifetime, or by will, shl (subjt to her debts & engagemts) go & belong to the psons or pson who wd have become entled thto if the sd A. had died in the lifetime of the sd B.

Husband to allow wife's will to be proved.

10. If the sd B. shl die in the lifetime of the sd A., he shl permit her will to be proved, or admon to her psonal este & effects to be taken out by the pson or psons who wd have been entled to do so had the sd A. died in her lifetime.

Custody of infant children.

11. The sd B. shl have the sole custody & control of, *here name chln,* & of their educon & bringg up until they resply attn the age of — yrs (*b*), witht any interferce whatsr on the pt of the sd A.

Expense of maintenance of infant children (*c*).

[12. If & so often & so long as any child or chln of the sd A. & B. shl durg the jt lives of the sd A. & B. be livg with or under the control of the sd B., the sd A. shl pay to the sd trees or tree in trust for the sd B. the sum of £—— p.a. in respt of each such child being under the age of — yrs, & the sum of £—— p.a. in respt of each such child being over the age of — yrs & under the age of twenty-one yrs & unmarried, such respive yrly sums to be apportionable at the commencemt & terminon thof accdg to law, but to be payable by eql qtrly paymts on the usual qtr-days, & to be applied by the sd B. in or towards the mtce & educon or orwise for the benefit of such chln or child, but witht liability to acct so long as she shl maintain & educate such chln or child to the satisfon of

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the doctrine altogether, but as this is not clear (see Vol. I., p. 613, note), trustees should be interposed in the conveyance of the leaseholds in the text, and in the case of the freeholds, as the wife is one of the conveying parties, the conveyance is made to the trustees as grantees to the use of the wife. It would generally be better to convey the freeholds or leaseholds by a separate deed, so as to avoid bringing the other provisions of the separation deed on to the title. See also as to the clauses in the text, *Pride* v. *Bubb*, L. R. 7 Ch. 64.

(*a*) See note (*d*) on last page.

(*b*) See 36 & 37 Vict. c. 12, s. 2 of which makes valid an agreement giving a mother the custody of the children, subject to the discretionary power of the Court, as to which see the Guardianship of Infants Act, 1886, s. 5.

(*c*) As to the liability of a married woman having separate property to maintain her children, see the M. W. P. A. 1882, s. 21.

the sd trees or tree; The sd A. shl also pay the funl expses of any child who shl die while livg with or under the control of the sd B.,] [*or*, THE SD B. shl, out of her own moys, provide & pay for the mtce & educon of the chln or child for the time being livg with her or under her control by virtue of these psnts,] [*or*, EACH OF THEM, the sd A. & B., shl, out of his or her own moys, provide & pay for the mtce & educon of any chln or child durg any period or periods while such chln or child shl be livg with him or her, or under his or her control.]

13. THE SD A. & B. shl resply at all convenient & reasble times, to be settled in case of dispute by the sd trees or tree for the time being, have access to & communicon with the chln or child for the time being livg with or under the control of the other of them [or at school as hinafter is mentd].

Access to children (*d*).

14. THE SD K., L., & M., *the boys*, shl, as & when they resply attn the age of — yrs, be placed at the expse of the sd A. at such schools in England [as he], or [at such schools] elsewhere as he, with the consent in writg of the sd B., [*or*, as the sd trees or tree] shl from time to time determine; such of them the sd K., L., & M., as shl for the time being be at school, shl pass the holidays at such places & in such mner as the sd trees or tree shl from time to time direct, havg regard to the reasble wishes of the sd A. & B.

Schools for boys (*e*).

15. IT SHL BE LFUL for the sd trees or tree, if circes shl arise wch in their or his opinion render it absolutely necy for the welfare of the chln or child for the time being livg with or under the control of eir of them the sd A. & B., to remove such chln or chld, & to place them, him, or her, with or under the control of the other of them the sd A. & B.

Power to trustees to change custody of children.

16. THE SD B., her hrs, exs, & ads, & also the sd C. & D., & their respive hrs, exs, or ads, shl at all times hrafter keep indemnified the sd A., his hrs, exs, & ads, from all debts & liabilities htofore or hrafter to be contracted or incurred by

Trustees to indemnify husband against wife's debts (*f*).

(*d*) This does not compel the party having the custody of the children to keep them in a place easy of access for the other party, *Hunt* v. *Hunt*, 28 Ch. D. 606.

(*e*) As to the right of the children to sue on such a provision as this, see *Gandy* v. *Gandy*, 30 Ch. D. 57.

(*f*) The provisions for the husband's indemnity should be retained although it has been determined that the wife has no power to pledge the husband's credit after a separation deed; *Eastland* v. *Burchell*, 3 Q. B. D. 432. As to the

As to husband's indemnity

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the sd B., & from all actions pcdgs, claims, & demands, costs, damages, & expses whatsr in respt of such debts & liabilities or any of them.

Proviso that annuity, &c., shall in certain events cease to be payable.

17. IN CASE the sd A. shl be obliged to pay any sum or sums of moy for or on acct of any debt or liability htofore or hrafter contracted or incurred by the sd B., or in case the sd B. shl at any time take any pcdgs agst the sd A. for restiton of conjugal rts or orwise for compellg him to cohabit with her, or shl at any time directly or indirectly molest the sd A. [or any member or members of his family], then & in any of such cases the sd anny of £—— shall cease to be payable, [*or*, the sd sum of £——, secd by the covt of the sd A., & the intt thon shl cease to be payable, and if the same sum shl have been pd by the sd A. to the sd trees or tree, the same & the investmts & income thof shl thenceforth be held in trust for the sd A. absolutely.]

Proviso that debts paid by husband may be deducted from annuity (*a*).

[18. IN CASE the sd A. shl at any time or times hrafter be called upon to pay or dischge, & shl actually pay or dischge any debt or liability htofore or hrafter contracted or incurred by the sd B., then & in every such case it shl be lful for the sd A. to deduct & retain out of the sd anny of £—— [to deduct & retain, or be reimbursed out of the sd sum of £—— hinbfe covted to be pd by him, & the investmts & income thof,] the amt wch he the sd A. shl have so pd in respt of such debt or liability, togr with all costs & expses wch he shl have pd or incurred on acct thof, but so that this psnt provon shl not in anywise render the sd A. liable to the paymt of any of the debts of the sd B., or prejudice his rts or remedies under the covts of indemnity of the sd B. & the sd C. & D. hinbfe contd.]

Covenant for further assurance.

19. EACH OF THEM, the sd A. & B., or their respive hrs, exs, or ads, shl at any time exte & do all such assurces & things as the other of them, his or her hrs, exs, ads, or assns, or the sd trees or tree shl reasbly require for the ppose of givg full effect to these psnts & the covts, agrmts, & provons hrin contd.

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against wife's debts.

general law, see *Debenham* v. *Mellon*, 5 Q. B. D. 394; 6 App. Cas. 24. It is conceived that the law on this subject is not altered by the M. W. P. A. 1882; and if so, this covenant would create a consideration for the covenants and provisions entered into on the part of the husband.

(*a*) See last note.

Proviso in case of reconciliation or dissolution of marriage.

20. PROVD ALWAYS, & it is hby agrd that if the sd A. & B. shl be reconciled, & return to cohabiton [or if their marre shl be dissolved, or they shl be judicially septed (*c*), by reason of any misconduct of the sd B. [occurrg after the date hrof]], then, & in such case, all the covts & provons hrin contd shl become void, but witht prejudice to any [sale or other] act previously made or done hrunder, or any pcdgs on the pt of any of the pties hto in respt of any then antecedent breach of any of the covts or provons hrin contd. [And the sd trees or tree shl hold any ppty then vested in them or him by virtue of these psnts, subjt & witht prejudice to any disposons or engagemts thtofore made or entd into with respt to the same by the sd B., to such uses, & upon such trusts, as will most nearly correspond with the uses & trusts to wch the same wd then resply be subjt if these psnts had not been exted.]

Provision as to appointment of new trustees (*d*).

21. THE STATUTORY POWER of apptg new trees of these psnts shl, as to trees to be appted in the place of the sd C., or of any tree to be appted in his place, be vested in the sd A., & as to trees to be appted in the place of the sd D., or of any tree to be appted in his place, shl be vested in the sd B. IN WITS, &c.

II.

DEED *of* COVENANT *securing* ANNUITY *to a* PAST MISTRESS (*e*).

Parties.

PARTIES, A., *covtor*, 1; B., *mistress*, 2; C. & D., *trees*, 3.

Recitals.

WHAS the sd A. was lately on terms of intimacy with the sd B.,

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As to provision for reconciliation.

(*c*) Arrangements for a separation sometimes embody provisions for a settlement or otherwise as to which it is extremely difficult to determine whether they are to cease in the event of a return to cohabitation, or are independent (see *Ruffles* v. *Alston*, L. R. 19 Eq. 539). It is very important to exclude all such questions as in the text.

(*d*) See the T. A. 1893, s. 10, *infra*, SETTLEMENTS.

(*e*) As to agreements in consideration of past cohabitation, see Pollock on Contracts, 6th ed., pp. 288 *et seq.*; it is assumed in this case that there has been no issue. The annuity will not cease on the parties resuming cohabitation, *Re Abdy*, [1895] 1 Ch. 455. The effect of the parties marrying before 1883 was to suspend the annuity during cohabitation; *Fitzgerald* v. *Fitzgerald*, L. R. 2 P. C. 83.

PREC. II.

Agreement. Witnesseth. Covenant.

but such intimacy has now ceased, AND WHAS the sd A. has agrd to make provon by way of anny for the sd B., & orwise as hinafter mentd upon the terms & condons hinafter expd. NOW THIS INDRE WITNETH that in psuance of such agrmt, & in conson of the premes, the sd A. doth hby covt with the sd C. & D., to pay durg the lifetime of the sd B., to the sd C. & D., or the survor of them, or other the trees or tree for the time being of these psnts (hinafter called the sd trees or tree), the weekly sum of £——, the first paymt to be made at the end of one week from the date hrof, AND IT IS HBY AGRD that the sd weekly sum shl be held by the sd trees or tree IN TRUST to pay the same to the sd B., & so that in case of coverture the same shl be for her separate use witht power of anticipon, & so also that the same shl be subjt to forfeiture if any act or event shl happen whby the same weekly sum or any pt thof if belonging absolutely to her wd become vested in or payable to some other pson or psons or a corporon, & in the event of the same being so forfeited, the sd trees or tree shl thenceforth pay or apply the same unto or for the mtce or psonal support or benefit of all or any one or more to the exclusion of the others or other of the follg objects, namely, the sd B. & her lful issue (whether minors or adult) for the time being in existce in such shares if more than one, & in such mner as the sd trees or tree in their or his absolute & uncontrolled discron may think fit, But in case at any time after such forfeiture there shl be no child or issue of the sd B. livg, then the sd weekly sum shl absolutely cease to be payable by the sd A., his exs or ads, PROVD ALWAYS, & it is exply stipulated by the sd A., & agrd that in case the sd B. shl at any time molest or annoy the sd A. by any act or pcdg whatever, & in parlar if she should hold or attempt to hold any communicon with the sd A. or any of his relons or friends eir psonally or by lre or through the medium of any pson other than the sd trees or tree (who shl be the only authorised intermediary for that ppose) or if she shl hold or attempt to hold any communicon with his wife or intd wife for the time being or any of her relons or friends, or if she shl call herself by the name of the sd A. or shl represent herself to be his wife or shl come to reside within —— miles of —— House [or any or residce for the time being of the sd A.], then & in any such case the sd weekly sum shl be absolutely forfeited & cease to be

Declaration of trust.

Restraint on alienation.

Proviso against molestation.

payable by the sd A., his exs or ads, AND IT IS FURTHER AGRD that in case any dispute or question shl arise as to whether any act or pcdg or any communicon on the pt of the sd B. is a breach of the provon or condon lastly hinbfe contd, or as to the rts of the sd B. under these psnts, the same shl be refd to the decision of two arbitrors or an umpire, whose decision shl be absolutely conclusive & bindg on all pties, & this shl be deemed an agrmt for a referce within the Arbitron Act, 1889, PROVD ALWAYS that in case the sd A. shl by will bequeath or secure to the sd B. durg her life an anny of eql or greater amt than the sd weekly sum hby made payable as afsd, then the anny so bequed or secd shl be in satisfon of such weekly sum wch shl in that case cease to be payable from the dece of the sd A., AND IT IS HBY AGRD that the power of apptg new trees of these psnts shl be vested in the sd A., his exs or ads. IN WITS, &c.

As to disputes.

Further proviso.

As to appointment of trustees.

SETTLEMENTS (PERSONAL).

PRELIMINARY NOTE.

THE forms under this head include those for land settled as personalty by means of a trust for sale. See 3 Dav. Prec.; Elph. Introd. Conv., p. 267 *et seq.* See also in connection with settlements, "APPOINTMENTS," Vol. I., p. 69 *et seq.*

Recent legislation affecting settlements.

The C. A. 1881.

The following is a short reference to the important recent legislation bearing on settlements of real and personal estate:—The C. A. 1881 (44 & 45 Vict. c. 41), s. 7, enabling covenants for title to be implied; s. 30 (as amended by the Copyhold Act, 1894, s. 88), by which trust estates in freeholds or copyholds, to which the trustee has not been admitted, vested in a sole trustee devolve on his death on his personal representatives, copyholds to which the trustee has been admitted still devolve on his customary heir, or the devisee of his trust estates; s. 39, enabling the Court to bind the interest of a married woman, notwithstanding a restraint on anticipation; s. 41, extending the provisions of the Settled Estates Act, 1877, to freeholds and leaseholds vested absolutely in an infant; s. 42, intended to obviate the necessity for inserting the usual minority clause by giving to the trustees powers of management and receipt and application of the rents in the case of an infant entitled in possession to land; s. 43, containing powers and provisions for maintenance and accumulation of surplus income during the minority of the person entitled in possession to any property real or personal; s. 44, giving the usual remedies for the recovery of rent-charges; s. 51, enabling an estate in fee simple or in tail or tail male or female to be limited by those expressions without the word "heirs"; s. 52, enabling the donee of a power to release it; ss. 58, 59, and 60, relating to the effect of covenants; s. 62, enabling easements, &c., to be limited by way of use; s. 71, partially repealing Lord Cranworth's Act (23 & 24 Vict. c. 145); and the 4th schedule giving a sample form of strict settlement of land (see s. 57):—The C. A. 1882 (45 & 46 Vict. c. 39); s. 6, as to the disclaimer of powers by trustees:—The S. L. A. 1882 (45 & 46 Vict. c. 38) (as amended by the Acts of 1884 (47 & 48 Vict. c. 18); 1887 (50 & 51 Vict. c. 30); 1889 (52 & 53 Vict. c. 36); and 1890 (53 & 54 Vict. c. 69)), ss. 3—20 and 31 (as amended by the Act of 1890, ss. 5, 7, 9, 10 and 11), conferring on tenants for life and other limited owners (as defined by ss. 2 and 58) under all settlements of land and hereditaments of any tenure corporeal or incorporeal (see s. 2, and the Act of 1890, s. 4), but as to settlements by way of trust for sale only under an order of the Court (s. 63 of the Act of 1882, as varied by s. 7 of the Act of 1884), extensive powers of sale, leasing, making grants in fee for building purposes, accepting surrenders of leases, sale, exchange, partition, enfranchisement, granting licences to copyholders, laying out land for building purposes, and raising money by mortgage, with full subsidiary powers; ss. 21—30 (as amended by the Act of 1887, and the Act of 1890, ss. 13 and 15), providing for the re-investment of capital money

The S. L. Acts, 1882 to 1890.

arising under the Act (or liable under a "settlement" to be invested in land, s. 33) according to the direction of the tenant for life in various modes, including improvements (and as to money in Court, see s. 32); s. 35, providing for the cutting of timber in certain cases; s. 37, enabling heirlooms to be sold under an order of the Court; ss. 50—52, providing that the powers of the Act shall not be assigned or parted with by the tenant for life or excluded by the settlement; s. 57, enabling the powers to be extended; s. 56 (as amended by s. 6 of the Act of 1884), keeping alive concurrent powers contained in the settlement, subject (except in the case of trusts for sale) to the consent of the tenant for life to their exercise; s. 59, extending the powers of the Act to the case of an infant absolutely entitled to land (see s. 60); and s. 64, repealing so much of Lord Cranworth's Act (23 & 24 Vict. c. 145), as had not been repealed by the C. A., 1881:—The M. W. P. Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 2, 5 (as amended by the M. W. P. A., 1893 (56 & 57 Vict. c. 63)), giving to every married woman the capacity of acquiring, holding, and disposing of property, and also of contracting (as to her separate estate), as a *feme sole*, and providing that the property of every married woman shall belong to her as a *feme sole*, except where the marriage and the acquisition of the property were both before 1883; ss. 6—9, providing specially as to investments, subject to a provision (s. 10) as to investments of the husband's money in fraud of his creditors; s. 11, enabling a policy to be effected by a wife on her own or her husband's life for her separate use, or by a wife or husband on her or his own life for the benefit of the other of them or the children; s. 12, giving married women remedies for the protection and security of their separate property (and see s. 17); ss. 13—15, regulating the liability of the wife and husband respectively in respect of the wife's ante-nuptial debts; s. 18, making special provision for the case of a married woman who is a trustee (and see s. 24); s. 19, providing that the Act is not to affect settlements before or after marriage of the property of a married woman, or a restriction against anticipation, subject to the rights of her ante-nuptial creditors, and to a provision avoiding settlements in fraud of her creditors; and ss. 20, 21, making a married woman having separate estate liable for the maintenance of her husband and children:—and the Trustee Act, 1893 (56 & 57 Vict. c. 53), (consolidating prior enactments relating to trustees), ss. 1 to 9, as to investments by trustees; ss. 10 to 12, and s. 47, as to the appointment of new trustees, the vesting of trust property in them, and the retirement of trustees; ss. 13 to 16, as to the powers of trustees under a trust or power of sale; s. 44, as to sales, &c., by trustees of land or minerals separately; s. 18, as to the powers of trustees to insure against fire; s. 19, as to their power to renew leases; s. 20, as to trustees' receipts; s. 21, giving power to trustees to compromise, &c.; s. 22, as to the survivorship of powers to two or more trustees; s. 24, as to the indemnity of trustees; ss. 25 to 41, as to the appointment of trustees by the Court and vesting orders; and s. 48, as to a trustee becoming a convict. Most of these enactments will be adverted to more particularly, as to their effect on settlements, *infra*.

The M. W. P. Act, 1882.

Trustee Act, 1893

As to the stamps on settlements, see the Stamp Act, 1891, schedule; Vaizey on Settlements, p. 1518, *Onslow* v. *Inland Revenue Commrs.*, [1891] 1 Q. B. 239.

RECITALS (*a*).

Intended marriage.

I. WHAS a marre is intd shortly to be solemnized betn the sd, *intd husbd & wife* (*b*).

Title to stocks, &c., in possession and agreement for settlement.

II. AND WHAS the sd A. is absolutely entled to the sevl stks, funds, shares, & secs follg, that is to say, *&c.*, *or*, "the ppty specified in the schdle hto," & upon the treaty for the sd intd marre it was agrd that the same shd be transferred to the sd, *trees*, in trust for the sd A., until the sd intd marre, & afterwds upon the trusts hinafter expd.

Title in possession to share of residuary estate and to a possible further share, and agreement for settlement.

III. AND WHAS under the will of X., deced, dated, &c., & a codl thto, dated, &c., wch were proved in the —— ct [registry] &c., on the —— day of ——, the sd A., [as one of the chln of K. deced,] is [will upon the solemnization of the intd marre become] absolutely entled in posson to one eql —— pt or share of the residy psonal este [& of the net proceeds of the sale & conversion of the real este] of the sd testor, wch, [so far as at psnt realized & ascertained,] consists of or is repted by the ppty specified in the schdle hto (*c*), & now standg in the names of [or orwise vested in or under the legal control of] L. & M. as trees of the sd will & codl, *or*, "the parlars & amt of wch este have not yet been ascertained"; & the sd A. may [in the event of the death of any of the other chln of the sd K., being a son or sons under the age of 21 yrs, or being a daur or daurs under that age & witht havg been married, *or*, "in certn events,"] become entled to a further share or shares of such residy este & premes; & upon the treaty for the sd intd marre it was agrd that the share or shares of such residy este & premes to wch the sd A. is or may become entled as afsd shl be assned to the sd, *trees*, in mner & upon the trusts hinafter expd.

(*a*) See also the forms of recitals in "CONVEYANCES ON SALE," Vol. I., pp. 356 *et seq*.

(*b*) If either is an infant, add "with the consent of the sd, *parent or gdian*." "Marriage" means a valid marriage, Elph. N. & C. Interp. 331; 43 Sol. J. 23. A settlement made in contemplation of a marriage which is broken off is not binding. *Bond* v. *Walford*, 32 Ch. D. 238.

(*c*) The particulars of the trust funds should be given, so far as ascertained, for the purpose of the *ad valorem* stamp duty.

Title to reversionary share in trust funds under settlement or will.

IV. AND WHAS under an indre, dated, &c., & made, &c., [the will of K., deced, dated, &c., & a codl thto, dated, &c., wch will & codl were proved on the —— day of —— in the —— Ct [Registry] &c.,] [& a deed poll of apptmt, dated, &c., under the hand & seal of ——,] the sd A. is [will upon the sd intd marre become] absolutely entled to the sum of £—— 2¾ p.c. Consold Stk (*d*), pt of a larger sum of like Stk subjt to the trusts of the sd settlemt, [will & codl,] *or*, "to one eql —— pt or share of the trust ppty [wch now is or by means of the accruer of any other ppty under the provon in the sd indre contd for the settlemt of after-acquired ppty of the sd X., shl at any time become] subjt to the trusts of the sd indre, [will & codl,]" *or*, "to one eql —— pt or share of all & singr the trust ppty, subjt to the trusts of the sd indre, [will & codl,] wch shl remain after satisfyg a prevs apptmt in favour of L., a daur of the sd X., made by a deed poll, dated, &c., subjt to the life intt of the sd X. thrin [subjt to certn prior intts thrin durg the lives & life of the sd X. & Y., & the survor of them"].

Title to portion money charged on settled estates.

V. AND WHAS under or by virtue of an indre of settlemt, dated, &c., & made, &c. (being a settlemt of the estes of the sd K., situate in the coy of ——, exted in conson of, & shortly bfe the marre of K. & L., his late wife), & by virtue of the trusts of a term of —— yrs by the same indre limd in the sd estes for raisg portions for the daurs & yor sons of the sd K. & L., [& by virtue of a deed poll of apptmt under the hand & seal of the sd K., dated, &c., in psuance of a power contd in the sd indre of settlemt] the sd B. is, [will if her intd marre shl take place within six calr months from the date of the sd deed poll of apptmt become] absolutely entled to the sum of £—— to be raisable out of the sd estes, & payable to her on the dece of the sd K., with intt from his dece at the rate of 4 p.c. p.a., until paymt, or in his lifetime with his consent.

Particulars of trust property.

VI. AND WHAS the ppty subjt to the trusts of the sd indre of settlemt, [will & codl,] *or*, "representg the residy este of the sd testor, [so far as the same has at psnt been realised & ascertained,]" (*e*) consists of, *state investmts, as*, "the sum of £—— deb stk of the —— Rly Co., the sum of £—— invested on

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(*d*) As to the designation of the public funds, see Vol. I., p. 71, note (*c*).

(*e*) See p. 450, note (*c*).

mtge of a freehd este at ——, in the coy of ——, &c.," *or*, "consists of the ppty specified in the schdle hto," wch are resply [is] standg in the names of or vested in or under the legal control of L. & M., the trees of the sd indre of settlemt [will & codl].

The same where partly consisting of land purchased and held as personalty.

VII. AND WHAS the ppty now subjt to the trusts of the sd indre of settlemt consists of the stks, funds, & secs specified in the schdle hto, & of the freehd, copyhd, & leasehd hds mentd in the sd schdle, wch have been pchased under a power contd in the sd indre, & are now vested in & held by L. & M., the trees of the sd settlemt, upon the trusts thrin contd for the sale of the sd hds, & for the applicon of the net sale moys, & of the net rents & profits of the sd hds, or of the unsold pt thof for the time being, upon the trusts thby decld concerng the moys applied in the pchase thof, & the income of such moys.

Agreement for settlement of reversionary or other share of property derived under settlement or will.

VIII. AND WHAS upon the treaty for the sd intd marre it was agrd that all the share or shares of the sd A., whether in posson, revon, or expectancy, & whether vested or contingent, of or in, &c., shd be assned to the sd, *trees*, in mner & upon the trusts hinafter expd.

Transfer of stock, shares, debentures, or other like property.

IX. AND WHAS psuant to an agrmt made upon the treaty for the sd intd marre, the sum of £—— 2¾ p.c. Consold Stk [—— shares of £—— each in, *or*, "—— Debs for £—— each of," the —— Co.] [*or*, the ppty, the parlars whof are specified in the schdle hto,] belongg to the sd A. has [have] been, [*or*, is [are] intd forthwith to be] transferred by him, [or by his diron] into the names of the sd, *trees*, to the intent that the same shl be held in trust, &c., *as in form* II.

Transfer of bonds to bearer or other property passing by delivery.

X. AND WHAS psuant to an agrmt made upon the treaty for the sd intd marre, —— Bonds of the —— Governmt for £—— each, [for sums amtg in the aggregate to £——,] bearg intt at the rate of £—— p.c. p.a., [the bonds & secs the parlars whof are specified in the schdle hto,] belongg to the sd A. have been, [*or*, are intd forthwith to be] delivered by him, [or by his diron] to the sd, *trees*, to the intent that the same shl be held in trust, &c., *as in form* II.

Transfer of stocks, &c. pursuant to recited agreement.

XI. AND WHAS the transfer agrd to be made as afsd of the sd stks, funds, shares, & secs to the sd, *trees*, has been, [*or*, is intd forthwith to be] duly made & perfected.

Statement

XII. AND WHAS the stks, funds, shares, & secs [ppty] specified in the schdle hto, & hby settled, do not togr exceed in value the sum of £——, accdg to the average market price thof on the day of the date hrof.

of value of stocks for stamp duty (*a*).

XIII. AND WHAS the sd A., *intd husbd*, is absolutely entled to a poly of assurce effected on his life & in his own name for the sum of £—— with the —— Assurce Socy, dated, &c., nod., &c., & under the annl prem of £——, [& to anor poly effected, &c.,] *or*, "to the sevl pols of assurce on his life hinafter mentd" (*c*), & upon the treaty for the sd intd marre, it was agrd that the same poly [respive pols] shd be assned to the sd, *trees*, in mner & upon the trusts hinafter expd.

Title to and agreement for settlement of policy or policies on husband's life (*b*).

XIV. AND WHAS the sd A. is absolutely entled, &c., *recitg title as in last form*, & psuant to an agrmt made upon the treaty for the sd intd marre, the sd A. has, by an indre bearing even date with & exted bfe these psnts, & made, &c., assned the sd poly [respive pols] & all moys assured by or to become payable thrunder to the sd, *trees*, in trust for the sd A., until the sd intd marre, & afterwds upon such trusts as shd be decld concerng the same by an indre thrin refd to, meaning these psnts.

The same, where assignment effected by separate deed.

XV. AND WHAS psuant to an agrmt in that behalf made upon the treaty for the sd intd marre, the sd A., *intd husbd*, has effected an assurce on his life for the sum of £——, in the —— Office, by a poly No. ——, Series ——, in the names of the sd, *trees*, under the annl prem of £——, [& anor assurce, &c.,] to the intent that the same poly [respive pols] shl be held in trust, &c., *as in form* II.

The same, where effected in names of trustees.

XVI. AND WHAS the sd A. is absolutely entled to a sum of £—— & intt secd on mtge of certn freehd hds, situate at, &c., [belongg to X.,] by an indre, &c., & psuant to an agrmt made upon the treaty for the sd intd marre, the sd A. has, by an indre bearg even date with & extcd bfe these psnts, & made, &c., transferred the sd mtge debt & intt, & the secs for the same, to the sd, *trees*, &c., *as in form* XIV.

Title to mortgage and transfer to trustees (*d*).

(*a*) See the Stamp Act, 1891, s. 6.

(*b*) If the assignment is effected by a separate deed (see note (*d*) to Precedent II., p. 527), this recital is for insertion in the deed of assignment, the next one for insertion in the settlement. This recital is also applicable if the assignment is effected by the settlement.

(*c*) It is generally more convenient to give the particulars of the policies in the operative part, as it facilitates the making out of the notices to be given to the offices.

(*d*) The transfer is made by a separate deed in order to keep the trust off the title.

Conveyance in trust for sale of freeholds to trustees (*a*). Variations for leaseholds and copyholds.

XVII. And whas psuant to an agrmt in that behalf made upon the treaty for the sd intd marre, by an indre bearg even date with & exted bfe these psnts, & made, &c., the sd A., *intd husbd*, with the approbon of the sd B., *intd wife*, has assured certn freehd hds situate in the parish of —— & coy of ——, & thrin parlarly descd, to the use of the sd A. & his hrs until the sd intd marre, & aftwds to the use of the sd, *trees*, their hrs & assns, upon the trusts thinafter decld concerng the same; [And by the same indre the sd A., with the like approbon, has assned certn leasehd hds, situate, &c., to the sd, *trees*, for the residue of the respive term grted by the thrin recited sevl indres of lease under wch the same are sevly holden, subjt to the respive rents & covts on the part of the lessees & condons by & in such indres of lease resply reserved & contd, Upon trust for the sd A., until the sd intd marre, & aftwds, upon the trusts, &c., *as above;* And by the same indre the sd A., with the like approbon, has covted with the sd, *trees*, their hrs & assns, to surrender certn copyhd hds, situate, &c., & held of the manors of —— & ——, to the use of the sd, *trees*, their hrs & assns, accdg to the customs of the sevl manors of wch the same are resply holden, Upon trust for the sd A. & his hrs until the sd marre, & aftwds, upon the trusts, &c., *as above;*] And it was thby decld that the sd, *trees*, their hrs, [exs, ads,] & assns shd after the sd marre at the reqt or at the discron thrin mentd, sell the sd freehd, [leasehd, & copyhd] premes, or any of them, in mner thrin mentd, & shd stand possed of the net moys to arise from any such sale, & the net rents & profits of the sd premes, or of the unsold pt thof for the time being, after paymt of the expses thrin mentd (*b*), upon such trusts, &c., *as in form* XIV.

As to covenant to be entered into for payment of annual or principal sum.

XVIII. And whas upon the treaty for the sd intd marre, it was further agrd that the sd —— shd enter into such covt as is hinafter contd for the paymt to the sd, *trees*, of the annl sum, *or*, "ppal sum & intt," hinafter mentd, to be held & applied upon the trusts & in mner hinafter expd.

Agreement as to set-

XIX. And whas it has been also agrd that such provon shl be made for the settlemt of other or future acquired ppty of

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(*a*) See note (*d*) on last page.

(*b*) As to the frame of the trusts in a deed of this nature, see *infra*, p. 496.

the sd, *intd wife*, except as hinafter mentd, as is hinafter contd.

tlement of wife's after-acquired property.

XX. AND WHAS it has been also agrd that these psnts shl contain the sevl other covts, clauses, & provons hinafter contd.

General agreement.

CLAUSES.

Assignment by husband or wife of

I. NOW THIS INDRE WITNETH that in psuance of the sd agrmt in this behalf, & in conson of the sd intd marre, the sd *husbd* [*wife*] **as settlor** (*c*), with the approbon of the sd,

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As to implying covenants for title in a settlement under the C. A., 1881.

(*c*) The provisions of the C. A., 1881, s. 7 (1 A., B.) enabling the ordinary qualified covenants for title and further assurance in a conveyance or assignment of freeholds, leaseholds, or personalty, or a covenant to surrender copyholds, to be implied in a conveyance on sale (as to which see Vol. I., p. 406 *et seq.*, note), are applicable also to settlements on marriage, or for other valuable consideration. As to what is a settlement for value, see 3 Dav. Prec. part 1, 673 *et seq.*; Vaizey on Settlements, ch. 3. In such a settlement the full covenants may therefore be implied by making the settlor or each settlor convey "**as benefl owner,**" so that the covenants of each will extend to the property or interest expressed to be conveyed by him. In a post-nuptial settlement for valuable consideration, if the wife is a conveying party "**as benefl owner,**" her covenants would be contracts binding her as a *feme sole* under the M. W. P. A., 1882, s. 1, as amended by the M. W. P. Act, 1893, s. 1, to the extent of her separate estate which she is able to bind, as to the acts of herself and her ancestors, &c., and if the husband also conveys in like manner, his covenants would extend to the acts of himself and his wife and persons under whom they claim.

As to implying covenant for further assurance only.

Inasmuch, however, as it would not usually be according to the intention that the settlor should enter into the full covenants for title, the Act contains a provision (s. 7 (1 E.)) applicable to conveyances and assignments, &c., "by way of settlement," enabling the settlor, by conveying or assigning "**as settlor,**" to imply only a covenant for further assurance, as to the property or interest expressed to be settled by him, restricted to the acts of the settlor himself and persons "deriving title under him by deed or act or operation of law in his lifetime subsequent to the settlement, or by testamentary disposition or devolution in law on his death."

As to implying covenants in a voluntary settlement.

The last-mentioned enactment is not confined to settlements for valuable consideration, and the restricted covenant for further assurance may therefore be implied in a voluntary settlement; but should it be desired (which is not likely) that the settlor should in such a case enter into the full covenants for title, the covenants must be inserted at length, or the statutory covenants incorporated by an express clause. A deed of gift to a person absolutely would probably be a conveyance "by way of settlement" under the Act, but as that is doubtful, an express covenant for further assurance must, if so according to personal estate to trustees.

wife [*husbd*], doth hby assn unto the sd, *trees*, ALL, &c., *pcels* (*a*): TO HOLD the same [subjt to the intt of the sd, *prior*

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the intention, be inserted in such a case, or the statutory covenant expressly incorporated.

As to covenant against incumbrances by trustee, &c.

Where a trustee or mortgagee joins as a conveying party in a settlement, ordinary covenant against incumbrances may of course be implied under the Act (s. 7 (1 F.)), by his conveying "**as tree**," or "**as mtgee.**"

As to covenants for title generally, see Vol. I., p. 406, note; Vaizey on Settlements, pp. 320 *et seq.*

The statutory covenants may be and are in practice generally relied upon, except in the case of real estate abroad. For the full forms of express covenants for title or against incumbrances, which are adapted with little if any alteration to settlements, see Vol. I., "CONVEYANCES ON SALE," pp. 410 *et seq.*

In the form in the text, if it is desired to imply the full covenants for title, the words "**as benefl owner,**" will be substituted for "**as settlor.**"

As to making the husband join in the wife's covenants.

Where the wife or intended wife is the settlor, and it is desired that the husband should also covenant, the following variation may be used:—"The sd *wife* '**as settlor,**' *or*, '**as benefl owner,**' doth hby assn [grt], & the sd, *husbd*, '**as settlor,**' *or* '**as benefl owner,**' doth hby assn [grt] & confirm unto, &c." It has been the practice to make the husband join in the covenants for title or further assurance of the wife's property, and it may in general be proper that he should still do so where the full covenants for title are entered into; but there would be little utility in his joining in the statutory covenant for further assurance, having regard to its restricted operation.

It should be remembered that a conveyance of an interest subject to a power of appointment by another person does not pass any interest that the conveying party may subsequently acquire under an appointment. *Lovett* v. *Lovett*, [1898] 1 Ch. 82.

Forms of parcels.

Personal estate.

Vested reversion.

(*a*) The following forms of parcels for personal estate are adapted to the more ordinary cases. For a vested reversionary interest under a settlement, "ALL THAT the sd moiety, *or*, 'eql —— pt or share' [or other the pt or share] to wch he the sd A. is [or will upon the sd intd marre, or in any other event, become] entled under or by virtue of the sd indre of settlemt of, &c., [& the sd deed poll of apptmt of, &c.,] of or in the trust ppty comprd in or [wch is now or may at any time become] subjt to the trusts of the sd indre of settlemt, expectant on the dece of the sd X. & Y., & subjt to their respive life intts thrin, as hinbfe mentd."

The same, with possible accretions.

For a vested share and possible additions by accruer, &c., of a legacy, "ALL THAT eql —— pt or share [or other the pt or share] to wch the sd A. is entled under or by virtue of the sd will & codl of the sd L., & all other, if any, the pt or share, or pts or shares, to wch he may hrafter become entled by accruer, survorship, or orwise, in the event of the death of any of the other chln of the sd X. & Y., under the age of twenty-one yrs, *tenants for life*, thrin] UNTO the sd, *trees*, IN TRUST for the sd, *husbd*, [*wife*] until the solemnon of the sd intd marre, &

Variation where the assign-

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or in any other event, of or in the sd legacy or sum of £—— bequed by the sd will in trust as hinbfe recited, or the investmts or ppty now or from time to time representg the same, & of or in the accumulons thof, expectant on the dece of the sd X. & Y., & subjt to their respive life intts thrin."

Share of residue under will.

For a share in possession of a residuary estate under a will, "ALL THAT the sd eql —— pt or share [or other the pt or share] of the sd A., under the sd will & codls of the sd L., of or in the residy psonal este, & the proceeds of the sale, & the rents & profits until sale, of the real & leasehd este of the sd testor, & the investmts & ppty now or hrafter representg the same resply."

Contingent interest.

For a contingent interest, "ALL the pt or share, pts or shares, or the whole, as the case may be, to wch the sd A. will, in the event of his attaing the age of —— yrs, *or*, 'in the event of his survivg the sd X.,' or in any other event, become entled of or in, &c., & the accumulons thof under, &c.," *or*, "ALL & every the pt or share, pts or shares, & intts whatsr to wch the sd A. is now in anywise entled, in posson, revon, expectcy, contingcy, or orwise, under or by virtue of, &c., or by any means whatsr, of or in, &c., & of or in all existg & future accumulons thof, subjt to the prior intts in or affectg the same."

Life policy or policies.

For a policy or policies of assurance, "ALL THAT the sd poly [ALL THOSE the sd respive pols] of assurce on the life of the sd A. in the sd —— Socy [& —— Socy] to wch he the sd A. is entled, as hinbfe recited, & the sd sum of £—— [respive sums of £—— & £——] assured thby, & all bonuses & addons thto [resply]," *or*, *if not recited*, "ALL THAT poly of assurce for the sum of £—— on the life of him the sd A., effected in the —— socy, dated, &c., & nod, &c., & under the annl prem of £——, [& also all that other poly, &c.,] & all moys assured by or to become payable under the same poly [respive pols]," *or*, "ALL THOSE —— sevl pols of assurce the parlars whof are specified in the schdle hrunder written, & all moys, &c."

Mortgage debt.

For a mortgage debt, "ALL THAT the sd ppal sum of £—— [formg pt of the sd sum of £——] owg on the secy of the sd indre of mtge of, &c., & the intt now due, & henceforth to become due, for the same, & the full benefit of all secs for the same ppal sum & intt."

Furniture, &c.

For furniture, &c., "ALL & SINGR the furniture, plate, pictures, prints, [diamonds, jewels, ment is by a separate deed.

aftwds [upon the trusts & subjt to the powers & provons hinafter decld & contd concerng the same] [upon such trusts, & subjt to such powers & provons as are or shl be decld & contd concerng the same resply, in & by an indre intd to bear even date with, & to be extd immedly after these psnts, & to be made betn, *pties*, [the same pties as these psnts]].

Trust for investment.

II. THE SD *trees*, or the [survors or] survor of them or other the trees or tree for the time being of these psnts hinafter called the sd trees or tree (*a*) shl eir allow the sd sum of £—— Stk or any pt thof [the sd ppty wch has been or is intd to be transferred to the sd trees as hinbfe mentd, *or* "the sd sums of £—— & £—— invested on mtge as afsd," *or if the ppty is revy*, "the sd shares & intts hinbfe assned, as & when the same resply shl fall into posson & be reced by the sd trees or tree," or any of them, or any pt or pts thof resply] to remain in the actual state of investmt thof, so long as the sd trees or tree may think fit, or shl at any time or times, with the consent in writg of the sd, *husbd*, & *wife*, or the survor of them durg their, his, or her lifetime, & after the death of such survor, at the discron of the sd trees or tree, sell [call in, or convert into moy (*b*)], the same, [or any of them], or any pt thof [resply],

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trinkets, psonal ornamts,] & other articles & effects belongg to the sd A., wch are parlarly descd in the schdle hrunder written," *or*, "ALL the furniture, plate, & other articles & effects of househd or domestic use or ornamt wch are now in or about the messe or dwg-house in wch he the sd A. now resides, situate & being, &c., or the out-bldgs, gardens, or grounds thof."

As to the "all estate" clause.

The "all estate" clause is useless and should be omitted, having regard to the C. A., 1881, s. 63, which implies it unless a contrary intention appears; see Vol. I., p. 399, note. Of course the description in the parcels of the interest to be settled should be sufficiently general (as in the above forms) to take in any possible interest of the settlor whether existing or hereafter accruing, if such be the intention; *Lovett* v. *Lovett*, [1898] 1 Ch. 82; as the "all estate" clause, whether expressed or implied by the Act, would probably not avail to pass any interest belonging to the settlor which is by mistake omitted in the parcels.

Interpretation of "trustees or trustee."

(*a*) This abbreviated expression is used throughout these forms on the assumption that it will have been interpreted as in the text in the first place where it occurs. The still shorter expression "the trees," might be used, being interpreted to include a sole trustee. If preferred, the interpretation clause may be placed at the end of the deed. See *infra*, p. 523, and note.

(*b*) Insert the words in these two brackets if there are mortgage-debts, debentures, &c., which may be called in or paid off, or reversionary interests. The following words may be substituted for the second bracket, if it is

& (*c*) invest the moys produced thby [or any other capl moys wch may be reced by the sd trees or tree in respt of the sd trust premes (*b*)] in the names or name [or under the legal control (*d*)] of the sd trees or tree in or upon, &c., *forms* III., IV., V., VI., VII. or VIII.

Investments. Restricted range (*f*).

III. ANY stks, funds, or secs (*e*), in or upon wch trust funds or cash under the control or subjt to the order of the Ct may

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desired to provide more specifically for debentures or reversions :—" & also all capl moys wch may be reced upon the paymt or dischge at maturity of all or any of the debs or secs afsd," *or*, " & also all capl moys wch may be reced in respt of the sd shares & intts hinbfe assnd, or any pt thof, when the same shl fall into posson."

(*c*) Where the settlement includes also a sum of money in possession, say here, instead of the words in the text, " & shl, with the like consent, or at the like discron, invest the moys produced thby, & the sd sum of £—— [when the same shl have been reced by them or him] in the names," &c., as in the text.

(*d*) If securities to bearer are *not* authorised, omit the words here bracketed.

(*e*) As to the meaning of securities, see 39 Sol. J. 122.

Statutory investments for trust funds. Trustee Act, 1893.

(*f*) The investments authorised by law for trust funds (in the absence of express prohibition) now consist mainly of those authorised by the T. A., 1893 (56 & 57 Vict. c. 53) (repealing previous Acts), which, omitting details, are as follows :—namely (s. 1), (a) the British funds ; (b) real or heritable security in Great Britain or Ireland (to which add certain chattel real securities for long terms, s. 5) ; (c) stock of the Bank of England or Ireland ; (d) India stock ; (e) securities guaranteed by Parliament ; (f) stock of the late Metropolitan Board of Works and the London County Council (both denominated Metropolitan Consolidated Stock), and Debenture Stock created by the receiver for the Metropolitan Police District ; (g) the debenture, rentcharge, guaranteed, or preference stocks of certain railway companies in Great Britain or Ireland ; (h) the stock of certain leased railway or canal companies in Great Britain or Ireland ; (i, j, and k) certain stocks of Indian railway companies ; (l) the debenture guaranteed or preference stocks of certain water companies in Great Britain or Ireland ; (m) and (n), nominal or inscribed stock of certain municipal boroughs, and of county councils, and of certain water commissioners ; (o) the Court securities, as to which see, for England, the Annual Practice, R. S. C., O. XXII., rr. 17, 17A, which differ in some respects from the securities authorised by the Act of 1893, and for Ireland, the rule of Court of 4th February, 1889. The statutory securities are subject to various restrictions, especially those as to redeemable stocks contained in s. 2 of the Act of 1893. In addition to the above, the statutory investments include (but subject in most cases to special conditions) charges under the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), and Local Loans stock, and certain other securities of minor importance (see the Act of 1893, s. 5) ; and charges under the special Acts of Land Improvement Companies ; corporation stocks created by special Acts empowering trustees to invest in them ; and for the time being be authorised by law to be invested [except real secs in Ireland], but not in any stks, funds, bonds, shares, or secs to bearer or transferable by mere delivery or delivery & endorsemt, though coming within the genl description of investmts hinbfe authorised.

Investments. Fair range (*a*).

IV. ANY of the public stks or funds or Governmt secs of the United Kingdom or India or any British Colony or Dependency or any secs the intt on wch is or shl be guaranteed by Parliamt,

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other investments authorised by special or private Acts. But certain securities to bearer coming within the general range of investments specified in the Act of 1893 are by s. 7 not to be taken by trustees unless expressly authorised by the trust. By s. 6 of that Act, money may be invested in the purchase of land or on mortgage, notwithstanding that the land is subject to a drainage or improvement rent under the Improvement of Land Act, 1864, or the other Acts there mentioned; this does not extend to rents created under the special Acts of the Land Improvement Companies, as to which see p. 407, note.

The S. L. Acts.

Capital money arising under the S. L. A., 1882, or liable to be laid out in the purchase of land (s. 33), may be invested or applied in any of the ways mentioned in s. 21 of that Act, as extended by 50 & 51 Vict. c. 30, 53 & 54 Vict. c. 69, s. 18, and 53 & 54 Vict. c. 70, s. 74 (re-enacting s. 11 of 48 & 49 Vict. c. 72).

As to investments on mortgage.

As to the duty of trustees with respect to valuations and title in investing on mortgage, see the T. A., 1893, ss. 8 and 9; p. 69, note. As to retaining investments, see *Re Chapman*, (1896) 2 Ch. 763.

As to investments to be expressly excepted or included.

It will usually be desired to except Irish real securities; Scotch heritable bonds, which are not excluded, are now free from the objection of being real estate, being by 31 & 32 Vict. c. 101, s. 117, made personal estate except in certain cases. Leasehold securities, which are not included in the statutory investments (except as to long terms, see above) have been rendered safer by reason of the protection against forfeiture for breach of covenant afforded by the C. A., 1881, s. 14, but where the covenants are onerous, are open to objection (see above, p. 75, note); it is not unusual, however, to include them, even where the range of investment is meant to be restricted. Securities to bearer should be expressly excluded if so intended. As to the custody of these, see ***Field*** v. ***Field***, [1894] 1 Ch. 425. As to the insertion of prohibitory words, see 33 Sol. J. 754. Should it be desired to exclude the statutory investments other than those specially authorised, the words, "but not in any other mode of investmt," should be inserted.

Power to vary investments should, of course, be inserted, form IX. As to the power to vary under the T. A., 1893, see *Hume* v. *Lopes*, [1892] A. C. 112, decided on the Trustee Investment Act, 1889.

As to investments by trustees generally, see Vaizey on the Investment of Trust Money, Ellis on the Trustee Act.

Remarks on clause in text.

(*a*) See note to last form. This form includes all the statutory investments of any importance except Irish real securities. The clause is wider than the statutory power by including, (1) colonial stocks not guaranteed by Parliament; (2) leasehold securities generally in Great Britain; (3) the securities of certain colonial public companies, and a wider range of securities of public companies of the United Kingdom, without the statutory restrictions; and (4) home or upon freehd, copyhd, leasehd, or chattel real (*b*) secs in Great Britain but not in Ireland [includg first chges regrd under the L. T. Acts 1875 & 1897 on freehd or leasehd hds in England (*c*)] or in stk of the Bank of England or the Bank of Ireland, or Metropolitan consold stk, or in or upon the debs, deb stk, or guaranteed or preferce or ordinary stk or shares of any rly or other Co a fixed or minimum rate of intt or divd on wch is guaranteed (whether absolutely or orwise) by the Governmt of India, or in or upon the debs or deb or rent-chge stk of any rly, canal, dock, harbour, gas, water, or other Co or body incorpd by special Act (*d*) of the Imperial Parliamt or of the legislature of any British Colony or Dependency or by Royal Charter, or in or upon the guaranteed or preferce stk or shares of any such Co as afsd wch shl have pd divds upon its ordinary capl at the rate of at least five p.c. p.a. for at least five yrs prior to the time of investmt, or in or upon the stks, bonds, debes, or secs of any municipality, coy or district council, public body, or local authority in the United Kingdom [but not in any stks, funds, bonds, shares, or secs to bearer, &c., *as in last form*].

Invest-ments. Fair range. Another form.

v. In any of the modes of investmt authorized by the Trustee Act, 1893 (other than real & heritable secs in Ireland & Scotland, & the stks, shares & secs of Cos, corporons & bodies in Ireland, all of wch are hby expressly forbidden) [but includg first chges regrd under the L. T. Acts 1875 & 1897 on freehd or leasehd hds in England (*c*)], or in or upon the debe or rentchge stk, or the guaranteed or preferce stk or shares of any rly Co in Great Britain, incorpd by special Act of Parliamt,

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municipal stocks without the statutory restrictions. The trustees are left free to have regard to the restrictions in the Act of 1893 or not at their discretion.

(*b*) The expression "chattel real" is used as distinguished from "leasehold" securities, as being a more correct designation of long terms arising under settlements, which, although technically leasehold, were not created by lease.

(*c*) Probably "real security" includes a first registered charge with power of sale on registered land, as the remedies of the owner of such a charge for the recovery of his money are practically the same as those of a first mortgagee having the legal estate; but to avoid all doubt the words in this bracket may be added.

(*d*) A company incorporated by Act of Parliament means a company incorporated by special Act, *Re Smith*, [1896] 2 Ch. 590, or by charter from the Crown granted under statutory authority. *Elve* v. *Boyton*, [1891] 1 Ch. 501; see 40 Sol. J. 633. The expression "public company" which often occurs in investment clauses, includes a company incorporated under the Companies Acts, *Re Sharp*, 45 Ch. D. 286.

such Co, or if the guarantee be by a different rly Co, then such guaranteeing Co havg durg each of 3 yrs last past bfe the date of investmt pd a divd at the rate of not less than 2 p.c. p.a. on its ordinary stk, or in or upon the stk or shares of any rly Co in Great Britain incorpd as afsd, a fixed or minimum rate of divd on wch shl be secd by any other similar rly Co, such last-mentd Co havg durg each of 3 yrs last past bfe the date of investmt pd a divd at the rate of not less than 2 p.c. p.a. on its ordinary stk, or in or upon the stks, funds or secs of the Governmt of any British Colony or Dependency (no investmt in any secy transferable by delivery only being intd to be hby authorized), & on any loan on real secs authorized by these psnts, the trees or tree may make or consent to any stipulon that the moy so lent may remain for a certn time not exceedg 7 yrs on such secy, so nevs that the intt of such moy shl be pd punctually in eql qtrly or half-yrly paymts, or within one calr mth after such qtrly or half-yrly paymts shl become due.

Investments. Wider range.

VI. ANY of the public stks or funds or Governmt secs of the United Kingdom or India or any British Colony or Dependency, or of any foreign Governmt or State, or any secs the intt on wch is or shl be guaranteed by Parliamt, or upon freehd, copyhd, leasehd, or chattel real secs in Great Britain, but not in Ireland [includg chges regrd under the L. T. Acts 1875 & 1897 on freehd or leasehd hds in England (*a*)], or on the secy of any intt for a life or lives, or determinable on a life or lives or any other event, in real or psonal ppty in Great Britain, but not in Ireland, togr with a poly or pols of assurce on such life or lives or agst such event, or in stk of the Bank of England or the Bank of Ireland, or Metropolitan consold stk, or in or upon the debs, deb stk, or rent-chge, guaranteed or preferce stk or shares of any Co incorpd by Special Act or under any genl Act of the Imperial Parliamt or the legislature of any British Colony or Dependency, or Royal Charter, or in or upon the ordinary stk or shares of any such Co, a fixed or minimum rate of intt or divd on wch is guaranteed by the Governmt of the United Kingdom or India or any British Colony or Dependency or any foreign

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(*a*) As to registered charges, see *ante*, p. 461, note (*c*).

Governmt or State, or on wch divds shl have been pd at the rate of at least 3 p.c. p.a. for at least three yrs prior to the time of investmt, or in or upon ordinary preferred stk or shares but not on deferred stk or shares of any such Co, or in or upon the debs, deb stk, obligons, or secs of any foreign rly Co, or in or upon the stks, funds, debs, or secs of any public, municipal, or local body or authority in the United Kingdom or India, or any British Colony or Dependency, or any foreign country [but not in any stks, funds, bonds, shares, or secs to bearer &c., *as in form* III.]

Investments. Extensive range.

VII. Any of the public stks, or funds, or Governmt secs of the United Kingdom, or India, or any British Colony or Dependency, or any foreign Governmt or State, or in or upon freehd, copyhd, leasehd, or chattel real (*b*), secs in Great Britain or Ireland, ~~or~~ on chges regrd under the L. T. Acts 1875 & 1897 on freehd or leasehd hds in England, or on the secy of any intt for a life or lives, or determinable on a life or lives or any other event, in real or psonal immoveable or moveable ppty in the United Kingdom or India, or any British Colony or Dependency or abroad, togr with a poly or pols of assurce on such life or lives, or agst such event, or on the secy of any real or immoveable (*c*) ppty in India, or in any British Colony or Dependency, or in any foreign country, or in or upon the bonds, debs, deb stk, mtges, obligons, or secs, or the guaranteed, preferce or ordinary stk or shares, or ordinary preferred or deferred stk or shares of any Co, or public, municipal, or local body or authority in the United Kingdom or India, or any British Colony or Dependency, or any foreign country.

The same, short form (*d*).

VIII. IN OR UPON such stks, funds, shares, secs, or other investmts of whatsr nature & wheresr & whether involvg

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As to chattel personal security.

(*b*) Add, if desired, "with or witht chattel psonal," which will authorise a mortgage of, *e.g.*, a factory comprising machinery, plant, stock-in-trade, &c. But in the present state of the law as to bills of sale, such an investment by trustees could scarcely, except under very special circumstances, be proper.

(*c*) Add, if desired, "with or witht moveable," which will authorise a mortgage of an estate with the stock on it, as is common in the Colonies.

As to unrestricted powers of investment.

(*d*) As to clauses of this description, see *Re Brown*, 29 Ch. D. 889; Vaizey on Trust Investments, 180; Lewin on Trusts, 335 *et seq.*, 341, 342. Powers purporting to give an unlimited latitude in a short form, have sometimes been interpreted as authorising only the restricted range open to trustees in general, so as to prove misleading and dangerous; the form in the text is clearly not liability or not, or upon such psonal credit (*e*) witht secy as the sd trees or tree shl in their or his absolute & uncontrolled discron think fit (*a*), & with the like absolute power of varying such investmts from time to time, to the intent that the sd trees or tree shl have the same full & unrestricted powers of investg & transposg the investmt of the sd trust premes in all respts as if they or he were absolutely entled thto benefly.

Powers to vary investment (*aa*).

IX. AND may with such consent or at such discron as afsd, vary or transpose such investmts into or for others of any nature hinbfe authorised.

Power to lend on second mortgage or for a term certain, or on contributory mortgage.

X. AND ANY such investmt on mtge may be subjt to any prior chges or incumbces or to any stipulon for the contince of the loan for a term certn (*b*), or may be made in conjon with any other pson or psons by way of contributory mtge (*c*) to be taken in the jt names of the contributories to the loan, or any of them, or in the names of any psons not being less than three in no., as trees for such contributories, or orwise, as may be deemed expedient.

Power to invest on mortgages, &c., guaranteed by a company.

XI. AND IT is hby further decld that the sd trees or tree may lend or invest any moys formg pt of the sd trust este on any mtge secy, the ppal & intt of wch shl be guaranteed by a poly of any Co havg among its objects the guaranteeing of moy lent on mtge, & may upon any mtge so guaranteed advce such amt (up to the full amt guaranteed) as they or he in their or his absolute discron may think fit, witht regard to the value of the ppty comprd in such mtge, & may also have any other investmts formg pt of the sd trust este guaranteed by any Co, wch is empowered in that behalf, & may pay the prem or prems for any such guarantee as afsd out of the

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liable to such a restricted construction, but it is better to use form VII. In wording or construing clauses of this nature, it is important to remember that the word "securities," though popularly used as meaning all kinds of investments (in which sense it is used in the T. A., 1893, with the aid of an interpretation clause, see s. 50), has in law a stricter sense, being confined to bonds and debentures and the like, which create the relation of debtor and creditor, and not extending to stocks and shares. See 39 Sol. J. 122.

(*e*) As to lending to the tenant for life, see *Re Laing*, 43 Sol. J. 315.

(*a*) *I.e.*, Honestly think fit, *Re Smith*, [1896] 1 Ch. 71.

(*aa*) There is no apportionment of income on change of investment, *Re Clarke*, 18 Ch. D. 160.

(*b*) *Vicery* v. *Evans*, 33 Beav. 376.

As to contributory mortgages.

(*c*) Trustees cannot, without special authority, lend on a contributory mortgage, *Webb* v. *Jonas*, 39 Ch. D. 660; and see 3 Dav. Prec., part 1, p. 40; Elph. Introd. Conv., p. 323.

income of the sd trust este, or in such other mner as they or he may think fit.

Power to deposit deeds, &c., for safe custody, &c. (*d*).

XII. AND IT is hby agrd that it shl be lful for the sd trees or tree to deposit any deeds, secs, or instrumts [includg secs to bearer] held by them or him as such trees or tree with any bankers or any firm or Co for safe custody or rect of divds, & to pay out of the income of the trust este any sum payable for such deposit & custody.

Provision for one of trustees being named first on register.

XIII. PROVD ALWAYS & it is hby agrd & decld that in all cases in wch any stks, shares, or other investmts are registered or inscribed in the books of any Co or public body in the names of the sd trees, the name of the sd X., while he remains a tree shl, if desired by him, be placed first in such register or book, so as to secure to him the rt of votg or privileges thence arisg.

Power to lend part of trust funds to husband.

XIV. PROVD ALWAYS, & it is hby agrd that it shl be lful for the sd trees or tree, [& it shl be obligatory on them or him, upon the requiremt in writg of the sd, *husbd* & *wife,* durg their jt lives, or of the sd, *husbd,* after the death of the sd, *wife*], to advce from time to time any sum or sums of moy not exceedg in the whole the sum of £—— out of any pt of the sd trust premes (wch the sd trees or tree are hby authorised to sell, call in, or convert into moy for that ppose), by way of loan to the sd, *husbd,* for such period, at such rate of intt, not being less than five p.c. p.a., & upon such terms as he may require, so that the repaymt of every or any sum so advced with the intt thron be secd by the bond or covt of the sd *husbd,* eir with or witht any other secy, & to allow the moys so advced to remain on loan as afsd so long as the sd, *husbd,* may require [but so that the sd trees or tree may, at the reqt in writg of the sd, *wife,* durg her life, & after her death, with the unanimous concurrce of all the trees for the time being, if more than one, call in & compel paymt of the same], & so that the sd trees or tree shl not under any circes be liable for the loss of any moys so advced or the intt thron: And the sd trees or tree shl stand possed of the sum or sums, the paymt whof is intd to be secd as last afsd, & the investmts thof, & the income thof resply, upon the same trusts, & with & subjt to the same powers & provons as the sum or

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(*d*) As to the duties of trustees with respect to the custody of muniments of title and securities, see *Field* v. *Field*, [1894] 1 Ch. 425.

sums so advced, & the investmts representg the same, & the income thof resply, wd have been subjt to or held if the same had not been so advced.

First life interest to wife without anticipation (*b*).

XV. AND SHL pay the income of the sd ——, & the ppty representg the same, hinafter called the wife's fortune (*a*), to

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(*a*) This expression is used throughout these forms on the assumption that it will have been interpreted as in the text in the first place where it occurs.

Wife's separate estate under Married Women's Property Act, 1882.

(*b*) By the M. W. P. A., 1882, which is amended by the M. W. P. A., 1893 (see p. 449, note), s. 2, a woman married after 1882, is entitled to hold and dispose of all her existing and future property as her separate property, as if she were a *feme sole;* and by s. 5, a woman married before the Act is in the same position as to all property, her title to which accrues (whether in possession or not) after that date.

Saving clause as to settlements and restraint on anticipation.

But by s. 19, the Act is not to affect any settlement or agreement for a settlement, made or to be made, whether before or after marriage, respecting the property of any married woman, or to interfere with any restriction against anticipation attached or to be attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, or other instrument; but this is subject to a provision for the protection of her creditors, see *infra*.

Words expressing separate use should still be inserted.

The effect of the decisions in *Re Armstrong*, 21 Q. B. D. 270; *Hancock* v. *Hancock*, 38 Ch. D. 88; and *Stevens* v. *Trevor Garrick*, [1893] 2 Ch. 307, appears to be that every settlement or agreement for a settlement of the property of a married woman is to be construed and take effect exactly as if the Act had not been passed, except that the wife's interests (whether in income or capital) are her separate estate, whether so stated or not, *Re Lumley*, [1896] 2 Ch. 690. But property not expressly given to her for her separate use is not made her separate estate by the Act if the effect would be to prevent it being bound by the settlement.

Old practice as to restraining anticipation.

Prior to the Act it was the practice to settle any interest coming to the wife in possession during the coverture to her separate use without power of anticipation, but any interest which she might take in remainder or reversion after the husband's death, such as a life interest or the ultimate reversion in default of issue of the marriage, was not usually so settled. So far as personal estate was concerned, this was immaterial, as such an interest, being a reversionary *chose in action*, could not be disposed of at common law, and if it arose under the wife's own marriage settlement was excepted from the Act 20 & 21 Vict. c. 57, enabling a married woman to dispose of such an interest by deed acknowledged with the concurrence of the husband; but an interest in real estate, such as a jointure rent-charge, might have been disposed of by the wife with the concurrence of the husband by deed acknowledged.

Chose in action.

Reversionary interest in real estate.

Effect of late Act.

Under the new law it will be important to remember that any interest taken by the wife under the settlement, whether in real or personal estate, and whether in possession or not, may be disposed of by her as a *feme sole*, unless she is expressly restrained from anticipation; it is therefore desirable that such a restraint should be imposed (as it clearly may be) whether the interest is capable of coming into possession during the coverture or not, in all cases in which it is desired to protect the wife against marital influence.

In these forms, express words creating the separate use, coupled with a restraint on anticipation, are inserted in all such cases; but where the wife takes the sd, *wife*, durg her life for her septe use, witht power of anticipon (*c*).

First life interest to husband.

XVI. AND SHL pay the income of the sd ——, & the ppty representg the same, hinafter called the husbd's fortune (*d*), to the sd, *husbd*, & his assns durg his life.

Second life interest to husband.

XVII. AND AFTER the death of the sd, *wife*, shl pay the income of the wife's fortune to the sd, *husbd*, if survivg, & his assns durg his life.

Second life interest to wife without anticipation (*e*).

XVIII. AND AFTER the death of the sd, *husbd*, shl pay the income of the husbd's fortune to the sd, *wife*, if survivg, & her assns durg her life, but so that durg the intd cover-

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several interests under the settlement, it may be convenient to effect this by one clause, instead of repeating it in each case. Under the old law a mere declaration against anticipation without any words creating separate use was held to be nugatory (*Stogdon* v. *Lee*, [1891] 1 Q. B. 661) ; this is not so under the new law: *Re Lumley*, [1896] 2 Ch. 690.

Liability of wife's separate property to creditors.

By s. 13 of the Act of 1882, the wife's separate estate is made liable to her ante-nuptial debts and liabilities ; and by the latter part of s. 19 it is provided that no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property by herself, shall have any validity against debts contracted by her before marriage, and that no settlement or agreement for a settlement shall have any greater force or validity against creditors, than a like settlement or agreement for a settlement by a man would have ; and a married woman carrying on a separate trade is, by s. 1 (5), made subject to the bankruptcy laws. Any interest, therefore, which she takes under the settlement, if alienable, will be liable to her ante-nuptial and post-nuptial debts, and if she becomes bankrupt will pass to her trustee in bankruptcy (*Re Armstrong*, 21 Q. B. D. 264) ; and even though inalienable, will be liable to her ante-nuptial debts if she was the settlor (*Jay* v. *Robinson*, 25 Q. B. D. 467). A restraint on anticipation does not apply to income accrued due : *Hood-Barrs* v. *Heriot*, [1896] A. C. 174.

Power of Court to remove restraint on anticipation.

The Court is empowered by the C. A., 1881, s. 39, to bind the interest of a married woman notwithstanding a restraint on anticipation ; and by the T. A., 1893 (56 & 57 Vict. c. 53), s. 45, to impound such an interest for the indemnity of a trustee where the married woman has instigated a breach of trust.

Power to wife to give receipts, &c., during minority.

(*c*) If the intended wife be an infant, add here, "& her rect as well during her minority as aftwds shl be an effectual dischge for the same." Or the following general proviso can be used, "PROVD, &c., that the sd, *wife*, shl be competent durg & notwg her minority to exercise any of the powers hrin contd (except any power of disposon by will), & also to give any consent hrunder." As to the effectiveness of this, see 4 Dav. Prec., p. 73, note ; Vaizey on Settlements, pp. 382 *et seq.*

(*d*) See note (*a*), last page.

Proviso reducing wife's

(*e*) If the wife's income is to be reduced on a second marriage, the following proviso will effect that end without any alteration in the rest of the settlement, ture (*a*) the same shall be for her septe use, witht power of anticipon.

Second life interest to husband contingent on there being issue.

XIX. AND AFTER the death of the sd, *wife*, in case she shl leave the sd, *husbd*, & any issue of the sd intd marre her survivg, shl pay the income of the wife's fortune to the sd, *husbd*, or his assns durg his life, provd & so long as any such issue shl be livg, And from & after the dece of the sd, *wife*, & subjt to the trust hinbfe decld in favour of the sd, *husbd*, shl stand possed, &c.

First life interest to husband and wife respectively, and life interest to survivor (*b*).

XX. AND SHL, durg the jt lives of the sd, *husbd*, & *wife*, pay the income of the sd ——, & the ppty representg the same, hinafter called the husbd's fortune, to the sd, *husbd*, & his assns, & pay the income of the sd —— & the ppty representg the same, hinafter called the wife's fortune, to the sd, *wife*, & after the death of such one of them, the sd, *husbd*, & *wife*, as shl first die shl pay the income of the husbd's fortune and the wife's fortune to the survor of them & his or her assns, durg his or her life, but so that durg her sd intd coverture the sd life intts hby given to the sd, *wife*, shl be for her septe use witht power of anticipon.

Trust to pay annuity to wife during joint lives without anticipation, and residue of income to husband.

XXI. AND SHL, durg the jt lives of the sd, *husbd*, & *wife*, out of the income of the sd ——, & the ppty representg the same, hinafter called the [wife's] [husbd's] fortune, pay the yrly sum of £—— to the sd, *wife*, for her septe use, witht power of anticipon, to commence from the sd intd marre, & to be considered as accruing from day to day (*c*), but to be payable on the —— day of —— &c., *specify days, or,* "on the usual qtr

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income on second marriage.

"PROVD, &c., that if the sd, *wife*, shl marry again, a *moiety* only of the income of the sd trust premes shl thenceforth durg the remr of her life be pd to her, & the residue thof shl be pd or applied by the sd trees or tree in all respts as if the sd, *wife*, were dead."

(*a*) This form is desirable (see p. 466, note (*b*), since if the second life interest were merely given to the wife "for her septe use," this might be held to have reference to a future coverture only; see *King* v. *Lucas*, 23 Ch. D. 712. See also *Re Shakespear*, 30 Ch. D. 171.

(*b*) It is by no means clear that the user of this very convenient form will not render both funds liable to estate duty on the death of whichever of the husband and wife dies first.

Apportionment of annuities.

(*c*) These words are inserted to make the annuity apportionable at the commencement and termination, which, however, it would be under the Apportionment Act, 1870 (33 & 34 Vict. c. 35), without them.

days," & the first paymt thof to be made on such of the sd days as shl happen next after the sd intd marre, & shl durg such jt lives pay the residue of the sd income to the sd, *husbd*, & his assns.

First life interest to husband determinable on bankruptcy or alienation (*e*).

XXII. AND SHL pay the income of the sd ——, & the ppty representg the same, hinafter called the husbd's fortune, to the sd, *husbd*, durg his life (*d*), until some act or event shl happen (*dd*) (other than a consent to any exercise of the power of advcemt hinafter contd) whby the sd income or any pt thof if belonging

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(*d*) The form in the text is unobjectionable, but many practitioners say, "or until he [shl become bkpt or] shl assn or chge or affect to assn or chge the sd income or some pt thof on or until some other event, &c." The words in the brackets will be omitted if the settled fund belongs to the husband.

Limitations or trusts determinable on bankruptcy, &c.

(*dd*) These words are not retrospective: *West* v. *Williams*, [1899] 1 Ch. 132.

(*e*) As to limitations and trusts determinable on alienation or bankruptcy, see 3 Dav. Prec., p. 108 *et seq.*; Elph. Introd., p. 333; Vaizey on Settlements, 947; 33 Sol. J. 767. It must be remembered that a man cannot settle his own property so as to take an interest determinable or defeasible on his *bankruptcy*; *Higinbotham* v. *Holme*, 19 Ves. 88; 3 Dav. Prec., p. 134 (*secus*, where the settlement is made under a joint power of appointment given to the bankrupt and another person under a previous settlement to which the bankrupt was not a party, *Re Ashby*, [1892] 1 Q. B. 872); but he can take an interest in his own property determinable on *voluntary alienation*, *Brooke* v. *Pearson*, 5 Jur. N. S. 781; *Knight* v. *Browne*, 7 Jur. N. S. 894, 30 L. J. Ch. 649; and even on involuntary alienation by process of law in favour of a judgment creditor, *Re Detmold*, 40 Ch. D. 585; and he can be one of the objects of a discretionary trust, such as that in clause XXVII., even though he is himself the settlor, whether the trust is or is not preceded by a determinable life interest: *Holmes* v. *Penney*, 3 K. & J. 90; and he can take an interest determinable on bankruptcy as well as voluntary alienation in property settled by his wife or any third person, *Lockyer* v. *Savage*, 2 Stra. 947; *Ex parte Hinton*, 14 Ves. 598; *Kearsley* v. *Woodcock*, 3 Hare, 185; *Ex parte Eyston*, 7 Ch. D. 145.

As to wording of trusts.

Questions have arisen upon the wording of trusts of this nature as to whether a forfeiture was incurred by a bankruptcy which was afterwards annulled (*White* v. *Chitty*, 1 Eq. 372; *Lloyd* v. *Lloyd*, L. R. 2 Eq. 722; *Metcalfe* v. *Metcalfe*, 43 Ch. D. 633, [1891] 3 Ch. 1; *Re Loftus Otway*, [1895] 2 Ch. 235; *Re Hayward*, [1897] 1 Ch. 905, where the bankruptcy was colonial, the domicile of the beneficiary English: see also as to a receiving order not followed by bankruptcy, *Re Sartoris*, [1892] 1 Ch. 11), or an act purporting to be an alienation, but which for some reason could not, independently of the clause of forfeiture, so operate (*Re Porter*, [1892] 3 Ch. 481). Some of the difficulties last mentioned may be avoided by adopting a clause recommended in 33 Sol. J. 768: viz., "AND SHL pay the income of the trust premes to the sd, *husbd*, durg his life, except durg the pts thof (if any) while such income or any pt thof wd if belonging absolutely to him be vested in, payable to, or chged in favour of anor pson or a corporon, &

absolutely to him, would become vested in or charged in favour of (*ee*) some other pson or psons or a corporon (*a*).

Life interest in remainder to husband determinable on bankruptcy, &c.

XXIII. AND AFTER the death of the sd, *wife*, shl, if the sd, *husbd*, shl surve her (*b*), & if no act or event shl have happened (other than a consent to the exercise of the power of advcemt hinafter contd) whby the said income, or any pt thof, wd, if belonging absolutely to him, have become vested in or chged in favour of some other pson or psons or a corporon, pay the sd income to the sd, *husbd*, durg his life, or until, &c., *as in last form* (*d*).

Discretionary trust for application of income on husband's bankruptcy, &c., creating protected life interest (*f*).

XXIV. AND SHL, after the [death of the sd, *wife*, & the failure or] determinon durg the life of the sd, *husbd*, of the trust in his favour hinbfe decld of the sd income, from time to time durg the remr of his life (*e*), or durg such shorter period or periods, eir continuous or discontinuous, as the sd trees or tree shl in their or his absolute discron think fit, pay all or any pt of the sd income to or apply the same for the mtce & psonal support or benefit of all or any one or more, to the

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durg the excepted pts of his life shl hold such income upon the same trusts as if he were dead." If this form is used the discretionary trust will require some verbal modifications.

(*ee*) See *Re Brewer*, [1896] 2 Ch. 507.

(*a*) It may be desirable that the husband should not be prevented from relinquishing or charging his life interest in favour of a child, for which purpose the following proviso may be added :—

Power to husband to relinquish life interest in favour of a child.

"PROVD ALWAYS that nothg hrin contd shl prevent the sd, *husbd*, from assng or chging the sd income or any pt thof durg his life or any less period with the consent in writg of the sd trees or tree in favour of any child of the sd intd marre who shl have attned the age of twenty-one yrs, or shl have been married bfe or shl marry within six calr months after the date of such assnmt or chge."

(*b*) If preferred say, "& shl not be or have been a bkpt, & shl not have assned or chged, or affected to assn or chge the income of the sd trust premes or any pt thof, & if no other event, &c."

(*d*) See notes, last page.

(*e*) If the form given in note (*e*), p. 469, is used, say, "AND SHL durg the excepted pts of the life of the sd husbd."

As to life interests protected against alienation.

(*f*) As to the trusts of this nature, having for their object the securing to the husband the personal enjoyment of the income notwithstanding bankruptcy, &c., see 3 Dav. Prec., p. 125 *et seq.*; Elph. Introd. p. 333; above, p. 469, note (*e*). The insertion of a trust of this nature after a determinable life interest would exclusion of the other or others, of the follg psons, namely, the sd, *husbd*, and his wife *(ff)*, if any, & his chln or remoter issue for the time being in existce, & whether minors or adults, & the other psons or pson for the time being entled or intted, whether absolutely, contingently, or orwise, to or in the sd trust premes, or any of them, under the trusts hrin contd to take effect after the dece of the sd, *husbd*, in such proportions & mner as the sd trees or tree shl in their or his absolute & uncontrolled discron from time to time think pper, & subjt to the discronary power lastly hinbfe contd, shl, durg *(g)* such remr of the life of the sd, *husbd*, hold the sd income or so much thof as shl not be applied under such discronary power, Upon the trusts & for the pposes upon & for wch the sd income wd for the time being be held if the sd, *husbd*, were then dead.

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usually be according to the intention. It should be borne in mind that a discretionary trust of this kind cannot be created if the settlement is made under a special power of appointment, as it would be a delegation of the power, see *Chester* v. *Chadwick*, 13 Sim. 102.

Trustees may sometimes be placed in considerable difficulty in administering such a discretionary trust, since after an assignment by the life tenant extending to all his interest present and future under the settlement, they could not safely make any payment to him directly, nor, as it seems, by paying his bills, as the money so applied would, the moment it was appropriated for the purpose, pass by the assignment and belong to the assignee (*Re Coleman*, 39 Ch. D. 443; *Re Neil*, W. N. 1890, p. 92); and this would apply equally to the bankruptcy of the tenant for life, even, as it seems, after he obtains his discharge (see the remarks of Vaughan Williams, J., in *Re Ashby*, [1892] 1 Q. B. 877), unless the principle of *Lee* v. *Olding*, 2 Jur. N. S. 850; 25 L. J. Ch. 580; and *Re Vizard*, L. R. 1 Ch. 588, applies.

There is perhaps a tendency to insert determinable or protected life interests too frequently; such trusts sometimes prove inconvenient by preventing the life tenant's concurrence in a beneficial family arrangement after the children are *sui juris*, and should not be adopted without consideration. Perhaps power might be given to the trustees to dispense with the forfeiture clause, and also with the wife's restraint on alienation in a proper case as follows:—

Power to trustees to dispense with restraints on alienation.

"PROVD ALWAYS, & it is hby agrd & decld, that it shl be lful for the sd trees or tree at any time or times, if in their or his absolute & uncontrolled discron they or he shl deem it benefl by deed to dispense wholly or partially with the provon for forfeiture in the case of the life intt of the sd A., & also the restraint on anticipon in the case of the sd B. hinbfe contd, but not so as to annul any forfeiture actually incurred."

(ff) *Re Drew*, 43 Sol. J. 126.

(g) If the form given in note *(e)*, p. 469, is used, say, "the excepted pts of the life, &c."

The same, short form.

XXV. AND IN the event of the failure or determinon durg the life of the sd, *husbd*, of the trust lastly hinbfe decld in his favour shl, durg the remr of his life, pay or apply all or any pt of the sd income unto or for the psonal support or benefit of all or any one or more exclusively of the follg psons, namely, the sd, *husbd*, & his wife & issue (if any) for the time being in existce, & the psons or pson for the time being intted in the sd trust premes under the ulterior trusts hinafter decld in such shares & mner as the sd trees or tree shl from time to time in their or his absolute discron think pper, & subjt to such discronary trust or power shl hold the sd income upon the trusts upon wch the same wd for the time being be held if the sd, *husbd*, were then dead.

Trust after bankruptcy, &c., of husband during his life, where there is no discretionary trust (*a*).

XXVI. AND AFTER the [death of the sd, *wife*, & the failure or] determinon durg the life of the sd, *husbd*, of the trust hinbfe decld of the sd income in his favour, shl durg the remr of his life hold the sd income upon the trusts & for the pposes upon & for wch the same wd for the time being be held if he were then dead.

Short trust giving settlor protected life interest (*b*).

XXVII. AND SHL durg the life of the sd, *settlor*, pay or apply the income of the husbd's fortune or so much thof as the sd trees or tree in their or his uncontrolled discron shl think fit, unto or for the mtce or orwise for the benefit of the follg psons, namely, the sd, *settlor*, & his wife & issue, & the psons or pson intted under the ulterior trusts hinafter contd, or such one or more of such psons as the said trees or tree in the like discron shl think fit, & shl hold so much of such income as they or he shl not pay or apply in the exercise of the discronary trust or power afsd upon the like trusts as if the sd, *settlor*, were dead.

(*a*) If the husband is *not* to take a protected life interest as in form XXIV. (which protection, however, would usually be according to the intention), this clause should in general be inserted in preference to the trusts for the children being accelerated, which would involve an alteration in the common forms of those trusts; whereas the clause in the text by filling up the gap caused by the forfeiture of the husband's life interest avoids the necessity for any such alteration. This clause will not raise the difficulty as to children born after the bankruptcy, which occurred where the form was differently worded, in *Re Bedson's Trusts*, 28 Ch. D. 523.

(*b*) This trust (not preceded by a determinable life interest) is a mode of securing a protected life interest to the settlor himself; see *Holmes* v. *Penney*, 3 K. & J. 90, above, p. 469, note.

XXVIII. PROVD ALWAYS, & it is hby agrd that the life intt of the sd, *husbd*, in the husbd's fortune [*or*, wife's fortune] shl be subjt to & chged with the obligon of providg out of the income thof a suitable residce & mtce for the sd, *wife* (*d*), & such of the chln of the sd intd marre as shl for the time being be under the age of twenty-one yrs & unmarried, in priority, unless the sd trees or tree shl orwise exply determine, to any other fund applicable for that ppose, but witht liability to acct so long as the sd, *husbd*, shl duly provide such residce & mtce [& shl also be subjt to & chged with the obligon of makg such yrly or other periodical allowce (if any) as the sd trees or tree shl in their or his uncontrolled discron from time to time in writg direct or appt for the mtce & support of such of the chln of the sd intd marre as shl have attned the age of twenty-one yrs or be married, & shl, in the opinion of the sd trees or tree, require so to be maintained, but so that it shl not be obligatory upon the sd trees or tree to give any such diron as last afsd, & that no adult or married child of the sd intd marre shl in the absce of any such diron have any claim for mtce out of the income of the sd trust premes, & so also that in case the sd, *husbd*, shl assn or rele his life intt in the whole or any pt of the income of the sd trust premes to any child or chln of the sd intd marre, such child or chln shl hold the income so assned as afsd dischged from the provons hinbfe contd for providg a suitable residce for & maintaing the sd, *wife*, & infant chln, & of makg an allowce for any adult or married chln]. Proviso charging settlor's life interest with maintenance of wife and children (*c*).

XXIX. PROVD ALWAYS, & it is hby agrd that it shl be lful for the sd trees or tree so long as they or he shl deem it expedient so to do, to pay or remit the annl income hby settled in trust for the sd, *wife*, to such banker or other agent as she shl in writg from time to time appt, or to authorise such banker or agent to rece the same for the pposes of remittce or paymt Power to trustees to pay income to wife's bankers (*e*).

(*c*) This form may be adopted in lieu of the last as a mode of protecting the life interest of the settlor himself against creditors, see p. 469, note (*e*); and as to the clause in the text, see *Carr* v. *Living*, 28 Beav. 644; 33 Beav. 474; Elph. Introd. p. 336. See also the form of trust for an improvident person, *infra*, WILLS, and note thereto.

(*d*) If the husband takes the second life interest, the provision for the wife will of course be omitted.

(*e*) This clause, though not essential, is often inserted.

in such mner as she, the sd, *wife*, shl in writg direct; & every paymt or remittce so made by the sd trees or tree, psuant to such diron or authority, shl be as effectual as agst the sd, *wife*, as if the same had been made into her own hands & upon her rect, but this provon shl not restrict the sd trees or tree from requirg from time to time as the sd income shl accrue due a special diron from the sd, *wife*, resptg the applicon thof, or orwise paying the same into her own hands, if they or he shl deem it advisable so to do, & every such diron shl be revocable & she shl not be capable of disposg of or charging the sd income by way of anticipon.

Power of appointment among children. Variations where power extends to remoter issue.

XXX. AND AFTER the death of the sd, *husbd or wife*, [or, after the death of the survor of the sd, *husbd*, & *wife*,] shl stand possed of the capl & future income of the husbd's fortune & the wife's fortune [*or* "the husbd's fortune" *or* "the wife's fortune"] in trust for all or such one or more exclusively of the others or other (*a*) of the chln [or remoter issue] (*b*) of the sd intd marre [such chln or issue to take vested intts within twenty-one yrs from the death of the survor of the sd, *husbd*, & *wife* (*c*)] at such age, or time, or respive ages or times, if more than one, in such shares, & with such trusts for their respive benefit & such provons for their respive advancemt (eir after the death of the survor of the sd, *husbd*, & *wife*, or durg the lives of them, or the survor of them, with their, his, or her, consent in writg), & mtce & educon (*d*), at the discron

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As to exclusive powers of appointment.

(*a*) The words expressly authorising an exclusive appointment are usually inserted, although they are not now essential. See 37 & 38 Vict. c. 37, doing away with the necessity which previously existed (notwithstanding the Act 1 Wm. 4, c. 46), of appointing a nominal sum to, or leaving it unappointed for the excluded objects, where the power was non-exclusive.

As to extending power to grandchildren.

(*b*) It is so generally desirable that the power should extend to grandchildren, so as to enable the parents to provide directly (instead of through the medium of the trust in default of appointment) for the family of a deceased child, or to settle the share of a child on him or her for life with remainder (as far as the law against perpetuities will permit) to his or her issue, that the extension of the power in this manner may usually be assumed to be proper without special instructions; see 3 Dav. Prec. 144; Vaizey on Settlements, 1196.

(*c*) The words in this bracket, restricting the power within the rules as to perpetuity, are not necessary, as the power, whether so expressed or not, must be exercised with due regard to those rules: Elph. Introd., p. 337; but some such words are commonly inserted, and may prove useful by way of reminder of the rule when the power is exercised.

As to advance-

(*d*) Where the powers of maintenance and advancement apply only to of the sd trees or tree, or of any other pson or psons, as the sd, *husbd, & wife*, shl by any deed or deeds revocable or irrevocable jtly appt: AND IN DEFAULT of, & subjt to any such apptmt, as the survor of them, the sd, *husbd, & wife*, shl in like mner, or by will or codl appt (*e*).

The sam . Short form.

XXXI. IN TRUST for all or any of the chln [or remoter issue] of the sd intd marre, in such shares & mner in all respts as the sd, *husbd, & wife*, shl, &c., *as in last form.*

Proviso to be added to power of appointment where husband's interest is determinable (*f*).

XXXII. PROVD ALWAYS, & it is hby decld, that in the event of the sd, *husbd*, survivg the sd *wife*, & the failure or determinon in his lifetime of the trust hinbfe decld in his favour, the powers hinbfe given to him of makg apptmts in favour of the issue of the sd intd marre shl not be exercisable by him after [*or*, shl continue to be exercisable by him notwg] such failure or determinon.

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ment and maintenance powers in the case of appointed shares.

shares taken in default of appointment, the power of appointment should authorise the insertion of such clauses in an appointment to infants (especially where the power extends to grandchildren); and so as to enable an advancement to be made during the lifetime of the tenants for life, to prevent difficulty if the wife is restrained from anticipation, or the husband's life interest is forfeitable on alienation. See 3 Dav., p. 159; 38 Sol. J. 248; *McMahon* v. *Gaussen*, [1896] 1 Ir. R. 143, where it was held that the ordinary provisions as to maintenance and advancement apply to appointed shares; Vaizey on Settlements, p. 1218. Form XLI., p. 480, may, if thought fit, be inserted, to meet the case of an accidental omission in the appointment. As to the statutory maintenance clause, see *infra*, p. 477, note.

Restriction on power of appointment.

(*e*) The following proviso is sometimes added to the power of appointment, and its insertion is perhaps desirable: "PROVD ALWAYS that no child or other issue of the sd intd marre shl (except by way of advancemt) take or acquire an absolutely vested & transmissible intt in the capl of the sd trust premes under any apptmt in psuance of eir of the powers hinbfe contd, unless such child or other issue shl, being a male, attn the age of twenty-one yrs, or being a female, attn that age or marry."

Restriction on power of appointment where life interest determinable.

(*f*) When form XXIV., XXV., or XXVI., is not inserted, but the trusts for the children are to be accelerated, the continuance of the husband's power of appointment may be inconvenient; otherwise it might remain exerciseable. In either case it is better to express the intention, see 3 Dav. Prec., p. 799. Where the husband takes a life interest in the wife's fortune, the following clause might be substituted in the case supposed: "but so that in the event of the sd, *husbd*, survivg the sd, *wife*, & the failure or determinon in his lifetime of the trust hinbfe decld in his favour of the income of the wife's fortune, the power lastly

Usual trust for children in default of appointment.

XXXIII. AND IN DEFAULT of & subjt to any apptmt under the power [respive powers] hinbfe contd, in trust for all or any the chln or child of the sd intd marre, who, being sons or a son, shl attain the age of twenty-one yrs, or being daurs or a daur, shl attain that age or marry (*a*), & if more than one, in eql shares.

Trust for children excluding child taking estate.

XXXIV. IN TRUST for all, or such one or more exclusively of the others or other of the chln or remoter issue of the sd intd marre, other than (*b*) a son, grandson, daur, or grandaur for the time being indefeasibly (*c*) entled to the first este in tail [male or in tail], eir in posson or remr under an indre, dated, &c., *or*, "the will, dated, &c., & provd, &c., of X." (*d*), at such age, &c., *as in form* XXX.: AND IN DEFAULT of, & subjt to any such apptmt in trust for all or any the chln or child of the sd intd marre other than (*e*) the first or only son or any other son or sons, who before his or their resply attaing the age of twenty-one yrs shl become [indefeasibly] entled, or any daur or daurs who before her or their attaing that age or marryg, shl become indefeasibly entled to first este in tail [male or in tail] under

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hinbfe contd shall not be exercised so as to diminish the share to wch any child of the sd intd marre shl have become entled by virtue of the trusts hinbfe contd, of the wife's fortune."

(*a*) Add here, if so intended, "with the consent of her or their parents or parent, or gdians or gdian." Under a trust in this form a daughter marrying under age without consent would, if she attains twenty-one, become entitled; for a form of trust excluding a daughter so marrying, see WILLS.

Exclusion of son succeeding to title.

(*b*) It is better to insert the usual power of appointment extending to *all* the children. When a son succeeding to a peerage or baronetcy is to be excluded, say, "other than & except any son or sons who bfe his or their attaing the age of twenty-one yrs, shl inherit or become heir apparent to the earldom of —— [the baronetcy now vested in ——]."

(*c*) Where the eldest son of the intended marriage will not necessarily be the first tenant in tail, this word should be inserted, and it should always be inserted in the case of daughters; but if there is a name and arms clause or a shifting clause in the settlement of the real estate, a child becoming entitled to the estate should be excluded from sharing in spite of his or her estate being defeasible under either of those clauses; see forms, *infra*, p. 594, note.

(*d*) For a Scotch entail, say, "entled as heir in entail in posson or as next heir substitute to the —— este.

(*e*) Where the variation in note (*b*) *supra* is used say "other than as afsd."

the sd indre [will], who being a son, &c., *as in form* XXXIII.: And if there shl be no child of the sd intd marre (other than & except as afsd), who being a son shl attn the age of twenty-one yrs, or being a daur shl attn that age or marry, then in trust for such one or more of the sd excepted class of chln as being a son or sons shl attn, &c., *as in form* XXXIII.

Usual hotchpot clause (*f*).

XXXV. PROVD ALWAYS that no child who [or whose issue] shl take any pt of the ppty hby settled under an apptmt by virtue of the power [eir of the powers] hinbfe contd shl in default of apptmt to the contrary be entled to any share of the unappted pt thof witht bringg the share or shares apptd to him or her [or to his or her issue] into hotchpot and acctg for the same accdly.

Hotchpot clause where a fund is settled by reference.

XXXVI. PROVD ALWAYS that no child who [or whose issue] shl take any pt of any ppty hby settled or agrd to be settled under an apptmt by virtue of any power hrin contd shl in default of apptmt to the contrary be entled to any share of the unappted pt of any ppty hby settled or agrd to be settled witht bringing the share or shares appted to him or her [or to his or her issue] into hotchpot & acctg for the same accdly.

Maintenance clause (*g*).

XXXVII. AND IT IS HBY AGRD that the sd trees or tree shl, after the death of the sd. *husbd & wife*, apply the whole, or such

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(*f*) Where a fund is settled by reference the next form should be used: *Re Marquis of Bristol*, [1897] 1 Ch. 946.

Power of maintenance, &c., in the C. A., 1881 s. 43.

(*g*) The C. A., 1881, s. 43, provides that: (1) "Where any property is held by trustees in trust for an infant, either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may at their sole discretion pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education or not;" (2) the surplus income is to be accumulated and invested in securities authorised by the settlement or by law (as to which see p. 459, note), "for the benefit of the person who ultimately becomes entitled to the property from which the same arise," with power to apply the accumulations for maintenance, &c., in subsequent years. But the clause is not to apply where a contrary intention is expressed or indicated (sub-s. 3).

As to the aplication of the clause.

The statutory power applies to all property real or personal (see the definition of "property" in s. 2), which is vested in trustees.

Cases to which the clause does not apply.

But the power does not apply, (1) Where the interest of the infant is defeasible, such as the old form of trust in settlements under which the children took interests vesting at birth subject to an accruer clause on death under twenty-one, &c., or where, though the interests are contingent on attaining pt as they or he in their or his discron shl think fit of the income (*a*) of the share in the sd trust premes to wch any

twenty-one, a child may by the happening of some event before he attains twenty-one be prevented from being a member of the class which is to take, as where a child becoming the eldest before he attains twenty-one is excluded (see *Re Buckley*, 22 Ch. D. 583, decided under the repealed clause in Lord Cranworth's Act); in such cases as the interim income is the absolute property of the infants (*Taylor* v. *Johnson*, 2 P. Wms. 504, *Re Buckley*), it would be applicable for maintenance by order of the Court, or by the trustees without any order; nor (2) Where the infant has less than a life interest, *e.g.*, a life interest determinable on alienation or otherwise (which would also come under the last heading of defeasible interests), or an interest for a fixed term of years; nor (3) As it seems, to an annuity; nor (4) Where the vesting is postponed to a later age than twenty-one, which, however, it could not be in a marriage settlement, as being too remote; nor (5) Where the interest is contingent on the infant surviving another person, this not being such a contingency as is within the words of the section (see per Kay, J., in *Re Judkin*, 25 Ch. D. 749); nor (6) To a gift not carrying interim interest, a case not often occurring under settlements, though common under wills, such as a legacy contingent on the legatee attaining twenty-one (*Re Judkin*, 25 Ch. D. 743; *Re Dickson*, 29 Ch. D. 331, or a vested legacy payable in future and not bearing interest, *Festing* v. *Allen*, 5 Ha. 573). See 35 Sol. J. 149, 238, 572; 37 Sol. J. 263, 281. It has been decided, *Re Jeffery*, [1895] 2 Ch. 577, that the statutory power of maintenance applies where the trust is for the children of a living person, though the interest of the infant is in that case subject to the contingency of being diminished by the birth of more children, which may not happen till after the infant attains twenty-one.

Application of clause to ordinary trust for children at twenty-one, &c.

It is established by the cases that where the interim income would go with the capital to the infant on his attaining twenty-one, the statutory clause applies, although he has only a contingent interest (*Re Dickson*, *ubi supra*, see the judgment of Cotton, L.J.), and that it applies to the common trust (both in deeds and wills) for children as a class at twenty-one or marriage: *Re Holford*, [1894] 3 Ch. 30.

In *Re Thatcher*, 26 Ch. D. 426, a direction to accumulate the income during the minorities was held not to be such an indication of a contrary intention as to exclude the Act.

In the case of a life interest, the effect of sub-s. 2 of s. 43 appears to be to add accumulations to capital for the benefit of the remaindermen, which would not always be according to the intention; but in *Re Humphreys*, [1893] 3 Ch. 1, where the life estate was vested, this was held to show a contrary intention under sub-s. 3 so as to exclude sub-s. 2 (and see *Re Buckley*, *ubi supra*); and in *Re Wells*, 43 Ch. D. 281, the same result was arrived at by a forced construction of sub-s. 2.

Maintenance

Where the trust estate originally comprises land, or there is a power to

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Variation.

(*a*) Where the children may be maintained as a class, say, "income of the share or shares in the sd trust premes to wch any child or chln of the sd intd marre shl for the time being be entled in expectcy for or towards his or her mtce or educon, or towards their common mtce or educon, & may eir themselves," &c.

child of the sd intd marre shl for the time being be entled in expectcy under the trusts hinbfe decld, for or towards his or her mtce, educon, or benefit, & may eir themselves or himself so apply the same, or may pay the same to the gdian or gdians of such child for the ppose afsd witht seeing to the applicon thof.

Accumulation clause.

XXXVIII. AND SHL, durg such suspense of absolute vestg as afsd, accumulate the surplus, if any, of the same income at compound intt, by investg the same, & the resultg income thof, in any of the investmts hinbfe authorised, for the benefit of the pson or psons who shl eventually become entled to the ppal fund from wch the same shl have proceeded, & may apply the accumulons of any precedg yr or yrs in or towards the mtce or educon of the child for the time being presumptively entled thto (*b*) in the same mner as such accumulons might have been

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power in the case of land in s. 42.

purchase land, s. 42 of the Act of 1881, supplying the usual minority provisions in the case of an infant entitled to land, should also be considered. That clause gives the "trustees," as there defined (sub-s. 1), a power (among others) of maintenance, with a provision for accumulation of the surplus rents, substantially similar to the provision of s. 43; but as regards the destination of the accumulations, the two clauses are in some cases at variance; and in settlements of land it will in general be desirable to insert an express provision as to this, so as to exclude the Act. But the provisions of s. 42 are not in all respects (especially in the trusts of the accumulations) adapted to land settled as personalty by means of a trust for sale, and it may be held not to apply to that case; and it clearly does not apply where the infant has only a contingent interest, as in an ordinary settlement of that kind, where the children take interests vesting at twenty-one, &c.

Addition to clause.

Where circumstances require it the words, "whether there is any other fund applicable or any pson bound by law to provide for such mtce or educon or not," (following the words of the Act), may be added to the clause in the text after "benefit;" the words "or any person," &c., being omitted where the father takes a life interest. See 3 Dav. Prec., pp. 180, 181, note.

As to form of clause.

The maintenance clause is usually expressed, as in the text, in the form of a trust, and not a mere power; but if the father does not take a life interest it should be altered in this respect to exclude any contention that the father has a right to require an allowance out of the income, according to *Mundy* v. *Earl Howe*, 4 Bro. C. C. 224; but see *Wilson* v. *Turner*, 22 Ch. D. 521; *Re Bryant*, [1894] 1 Ch. 324, in both of which the form was similar to that in the text. As to whether the Court will interfere with the discretion of the trustees, see *Re Lofthouse*, 29 Ch. D. 921; *Re Bryant*, *ubi supra*.

(*b*) Where the children may be maintained as a class, substitute for the words, "child for the time being presumptively entled thto," the words, "child or chln for the time being the objects of the trust for mtce & educon hinbfe contd."

applied had they been income arisg from the origl trust fund in the then current yr.

Maintenance and accumulation clause. Short form.

XXXIX. PROVD ALWAYS that the sd trees or tree may at discron apply all or any pt of the income of the share to wch any minor shl be entled in expectcy, & wd if of full age be entled in posson under the trusts hinbfe contd for his or her mtce, educon or benefit in such mner as may be thought fit, & shl invest the surplus income, if any, thof in any investmts hby authorised in augmenton of the capl of such share.

Advancement clause (*a*).

XL. PROVD ALWAYS, & it is hby agrd that it shl be lful for the sd trees or tree, at any time or times after the death of the sd, *husbd & wife*, or in their, his, or her lifetime, with their, his, or her consent in writg, to raise any pt or pts not exceedg in the whole one half of the then expectant, or presumptive, or vested (*b*) share of any child [or more remote issue (*c*)] of the sd intd marre in the sd trust premes under the trusts hinbfe contd, & to pay or apply the same for his or her advancemt, or orwise for his or her benefit, in such mner as the sd trees or tree shl think fit (*d*).

Provision extending advancement, &c., clauses to appointed shares (*e*).

XLI. AND IT IS HBY AGRD that the powers & provons hinbfe contd for the advancemt & mtce of the chln of the sd intd marre & the accumulon of surplus income shl (unless orwise provd in & subjt to the provons of the apptmt) apply to any

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Variation.

(*a*) As to the advancement clause, see 3 Dav. Prec., p. 171; and as to extending the clause to appointed shares, see above, p. 474, note (*d*), and *infra*, p. 440, form XLI. Alienation of or charge on his life interest by, or the bankruptcy of the tenant for life, prevents him from consenting to an advance, without the consent of the assignee or the trustee in bankruptcy: *Noel* v. *Lord Henley*, McCl. & Y. 302; *Whitmarsh* v. *Robertson*, 1 Coll. 570. *Re Cooper*, 27 Ch. D. 565. The court can authorise the committee of a lunatic to consent on his behalf. *Re Nevill*, 31 Ch. D. 161, and the Lunacy Act, 1890, s. 128.

(*b*) See *Molyneux* v. *Fletcher*, [1898] 1 Q. B. 648.

(*c*) These words will be added if it is intended that the power should extend to appointed shares. It is by no means clear that, in the absence of these words, appointed shares are excluded: 38 Sol. J. 248.

Additions to advancement clause in case of land.

(*d*) If the trust property may consist of land, add, "and if necy or convenient the same may be raised by the sd trees or tree by mtge of any hds for the time being subjt to the trusts of these psnts, & no mtgee shl be concerned to inquire as to the propriety of raisg the same or as to the amt wch ought to be raised."

Where land is settled by trust for sale by two deeds (see *infra*) it may be desirable to insert a power of this kind in the conveyance in trust for sale.

(*e*) See p. 474, note (*d*).

share or shares apptd to any child or grandchild of the sd intd marre under eir of the powers hinbfe contd in that behalf.

Addition to hotchpot and advancement clauses providing for valuation of land, &c.

XLII. AND FOR the ppose of givg effect to the provons as to hotchpot & advancemt hinbfe contd or any other provons of these psnts, the ppty for the time being subjt to the trusts of these psnts [or of the sd indre of even date hwith], whether real or psonal, or any pt or pts thof, shl as far as may be necy be valued in such mner & at such respive times as the sd trees or tree shl consider just & pper, & such valuon shl be conclusive.

Ultimate trusts with variations (*f*).

XLIII. AND IT IS HBY AGRD that if there shl be no child of the sd intd marre, who being a son shl attn the age of twenty-one yrs, or being a daur shl attn that age or marry (*g*), then subjt to the trusts, powers, & provons hinbfe decld & contd, & to the powers by law vested in the sd trees or tree, & to every exercise of such respive powers, the sd trees or tree shl stand possed [of the husbd's fortune in trust for the sd *husbd* (*h*), & shl stand possed] of the wife's fortune in trust for such pson or psons, & for such pposes as the sd *wife*, shl, while discovert by deed revocable or irrevocable, or whether covert or discovert, by will or codl, appt; And in default of & subjt to any such apptmt, if the sd, *wife*, shl survive the sd, *husbd*, IN TRUST for the sd, *wife*, & so that durg the sd intd coverture such contingent revy intt shl be her septe este, & she shl not have power to dispose of or chge the same by way of anticipon, but if the sd, *husbd*, shl survive the sd, *wife*, then IN TRUST for such pson

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As to frame of ultimate trust of wife's property.

(*f*) This trust is framed with the object of preventing the wife from making any disposition, except by will, in favour of the husband, the power of appointment being during the coverture testamentary only, and the wife's interest in default of appointment, if she survives, being subject to a restraint on anticipation (as to which see p. 466, note). But the power after the determination of the coverture (which would apply not only where the husband is dead, but also in case of a divorce, see 3 Dav. Prec., p. 187), is exercisable by deed or will. If it is intended to exclude the wife from making a will in favour of the husband, the following may be added after the power of appointment, "but so that such testy power of apptmt shl durg the sd intd coverture be exercisable in favour only of relons in blood of the sd *wife*, *or*, of psons of her blood & kindred." It is very improper to fetter the wife's power of appointment over her own property.

(*g*) If marriage with consent is required by the previous trusts, add, with such consent as afsd."

(*h*) For trusts of the husband's property only, stop here; of the wife's fortune only, omit the words in this bracket.

other than the above

or psons as wd have become entled to ~~the wife's fortune~~ [illegible] under the statutes for the distribon of the psonal este of intestates (*a*) at the death of the sd, *wife*, had she died possed thof intestate (*b*), & witht havg been married (*c*), such psons, if more

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(*a*) 22 & 23 Car. 2, c. 10, and 1 Jac. 2, c. 17. As the former Act has the short title of "The Statute of Distribution," it is unsafe to omit in the text the words "of the psonal este, &c.," owing to the risk of writing "statute" instead of "statutes."

(*b*) If the parties may be domiciled abroad or in Scotland, add here, "domiciled in England."

As to frame of ultimate trust excluding husband and issue.

(*c*) This trust (which is in the usual form) is intended to exclude not only the husband, but also any children of the marriage who may have died before attaining vested interests under the previous trusts, which is necessary; otherwise the whole fund might go to the husband as sole next of kin of a child dying in infancy in direct opposition to the intention. In several cases, however, trusts in this form have, by a strained construction, been treated as if the words "witht havg been married," were equivalent to "unmarried," *i.e.*, "not leavg a husbd survivg," so as to let in a child who would otherwise have been excluded (*Wilson* v. *Atkinson*, 4 De G. J. & S. 455; *Re Ball*, 11 Ch. D. 270; *Upton* v. *Brown*, 12 Ch. D. 872; and these cases have since been followed in *Stoddart* v. *Savile*, [1894] 1 Ch. 480; *Re Arden*, W. N. 1890, 204; *Re Forbes*, W. N. 1899, p. 6 (4)), notwithstanding *Emmins* v. *Bradford*, 13 Ch. D. 493, where the clause was construed according to its strict meaning; see also *Hardman* v. *Maffett*, 13 L. R. (Ir.) 499. It might be better, having regard to these cases, to alter the form by substituting for "witht havg been married," the words, "witht leavg the sd, *husbd*, or any child of the sd intd marre her survivg." See also 38 Sol. J. 320.

It follows that where a woman whose settlement made on first marriage contains an ultimate trust in the form in the text, marries again before any child of the first marriage has obtained a vested interest in all the trust funds, or if having children by a first marriage she makes a settlement on her second marriage containing such a trust, it is expedient for her to appoint under the powers in the ultimate trust so as to prevent the trust for the statutory next of kin from taking effect.

Variations.

If the intended wife is a widow having issue by a former marriage, who are not intended to be excluded, add after "witht havg been married," "to the sd, *husbd*;" see *Emmins* v. *Bradford*. If relations of the half blood are to be excluded say, "In trust for such pson or psons, being relons of the whole blood of the sd, *wife*, &c." and add after "intestate," "and witht leavg any relons of the half blood." The form in the text could not of course be used if the wife is illegitimate.

The ultimate trust is sometimes for the parent of the husband or wife: it must be remembered that this cannot be so where such parent has exercised a special power of appointment for the purposes of the settlement, having regard to the doctrine of frauds on powers; though the insertion in that case of the ordinary trust for the wife's statutory next-of-kin is not considered in practice as open to this objection.

than one, to take as tenants in common in the shares in wch they wd have taken under the same statutes.

General direction that interests of wife are without power of anticipation (*d*).

XLIV. PROVD ALWAYS & it is hby agrd that the sd, *wife*, shl not have power durg the sd intd coverture to dispose of or chge any este or intt of whatsr nature, & whether in posson, revon, remr, contingcy, or expectcy hby given to her in the trust ppty & premes hby settled or agrd to be settled by way of anticipon.

Trusts of husband's life policy by reference to trusts of wife's fortune, variations for reference to husband's fortune.

XLV. AND IT IS HBY AGRD, that the sd trees or tree shl stand possed of the moys wch shl be reced by them or him in respt of the sd poly [respive pols] of assurce on the life of the sd, *husbd*, hby assned, [*or*, hinbfe recited to have been effected], & of the investmts representg the same, & the income thof resply, upon the trusts, & subjt to the powers & provons hinbfe decld & contd concerng moys formg pt of the wife's [husbd's] fortune & the investmts representg the same, & the income thof resply, or as near thto as the deaths of pties & other circes will admit (*e*), save & except that if there shl be no child of the sd intd marre who being a son shl attn the age of 21 yrs, or being a daur shl attn that age or marry (*f*), then from & after

Variation in ultimate trust.

Effect of M. W. P. A., 1882, on husband's rights.

The M. W. P. A., 1882 (ss. 1, 2, 5), does not deprive a husband of his common law rights in respect of his wife's property in the event of her death intestate. Under the old law, the separate use being a merely equitable estate, and ceasing on the wife's death, the husband's common law rights thereupon took effect in respect of the wife's separate estate of which she died intestate, namely, his right to her freeholds as tenant by the curtesy (*Cooper* v. *Macdonald*, 7 Ch. D. 288; *Eager* v. *Furnivall*, 17 Ch. D. 115; *Shurmur* v. *Sedgwick*, 24 Ch. D. 597); to her leaseholds by survivorship (*Archer* v. *Lavender*, 9 Ir. R. Eq. 220; and see *Surman* v. *Wharton*, [1891] 1 Q. B. 491); to her personal chattels, *jure mariti* (*Bird* v. *Peagrum*, 13 C. B. 639; *Molony* v. *Kennedy*, 10 Sim. 254; *Johnstone* v. *Lamb*, 15 Sim. 308); and to her *choses in action* on taking out administration (*Proudley* v. *Fielder*, 2 Myl. & K. 57). See W., B. & C., pp. 247, 243; Hood & Challis, 383 *et seq.*

Under the Act of 1882, a married woman is for the purpose of "acquiring, holding and disposing of" her property made a *feme sole*, so that *during the coverture* the husband's rights are altogether excluded at law and in equity; but the Act does not purport to do more than this, and upon the wife's death without having exercised her power of disposition, its operation is spent, so that the husband's rights in this respect remain as they were before the Act, *Surman* v. *Wharton*, [1891] 1 Q. B. 491; *Hope* v. *Hope*, [1892] 2 Ch. 336; *Re Lambert*, 39 Ch. D. 626.

(*d*) See p. 466, note. Where the wife takes several interests under the settlement, it may be convenient to provide for this by a separate clause in this form.

(*e*) If the husband's fortune is referred to stop here.

(*f*) Add if required, "with such consent as afsd."

the death of the said, *wife,* & such default or failure of chln as afsd, & subjt to the trusts, powers, & provons hinbfe decld & contd [*if the statutory mtce power is relied on, add,* "& the powers by law vested in the sd trees or tree"] in favour of the issue of the sd intd marre, & to every or any exercise of such respive powers, the sd trees or tree shl stand possed of the sd poly moys & the investmts & income thof in trust for the sd, *settlor.*

Covenant to keep up policy or policies(*a*).

XLVI. AND THE SD, *husbd,* doth hby covt with the sd, *trees,* that if the sd intd marre shl take place, he, the sd, *husbd,* will not do or suffer anythg whby the sd poly [respive pols] of assurce may become void or voidable, or whby the sd trees or tree may be prevented from recevg the moys to become payable thrunder [resply], or any pt thof, & that if the sd [any such] poly has or shl become voidable, he, the sd, *husbd,* will forthwith, at his own cost, do all things necy for restorg or keepg on foot the same; And that if the sd [any such] poly, or any new poly to be effected as hinafter is mentd has or shl become void the sd, *husbd,* will forthwith at his own cost, effect or enable the sd trees or tree to effect a new poly or pols on his life, in their or his names or name, in such sum or sums as wd have been payable under the poly or pols wch shl have become void if the sd, *husbd,* had then died: AND THAT every such substituted poly, & the moys to become payable under the same, shl be held & applied upon the trusts, & with & subjt to the powers & provons hby decld & expd concerng the sd origl poly [pols] & the moys to become payable thrunder: AND FURTHER, THAT HE, the sd, *husbd,* will duly and punctually pay the annl premiums & other sum or sums of moy, if any, necy for keepg on foot the sd origl poly [pols], & any substituted poly or pols, & will forthwith deliver the rect for every such paymt to the sd trees or tree.

Power to trustees to keep up policy out of trust property or by borrowing money.

XLVII. AND IT IS HBY AGRD that it shl be lful for the sd trees or tree, if in their or his uncontrolled discron they or he shl think fit, to apply any pt of the income or capital of the sd trust premes in or towards paymt of the annl premiums & other sums, if any, necy for keepg on foot, or restorg the sd poly [respive pols] of assurce, or any such substituted poly as afsd,

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(*a*) As to the effect of the failure of the office, see 39 Sol. J. 356.

or for effectg any such substituted poly, or to borrow the amt required for any such ppose at intt on the secy of the sd poly or pols [& the other ppty hby settled, or agrd to be settled, or any pt thof] (*b*): PROVD ALWAYS, that any moys applied by the sd trees or tree out of any income or capl not belonging to the sd, *husbd*, for keepg on foot, restorg, or effectg any such poly as afsd, or in paymt of any moys borrowed for such ppose as afsd, or the intt thron, shl, if the sd trees or tree shl so think fit, be recouped out of such of the sd premes, whether capl or income, as shl be payable to, or become vested in the sd, *husbd*, his exs, ads, or assns.

Option of applying bonuses in diminution of premiums.

XLVIII. PROVD ALWAYS, & it is hby agrd, that any bonus or bonuses wch may from time to time be decld in respt of the sd poly [any of the sd pols] of assurce, or any such substituted poly as afsd, may (but subjt to the rules or any resolon of the Assurce Socy in that behalf) be at the option of the sd, *husbd*, applied eir wholly or partially in redon of the premiums upon such poly, & in default of, & subjt to any exercise of the sd option, such bonus or bonuses shl be added to, & be subjt to the same trusts, powers, and provons, as the moys assured by the sd poly.

Power to surrender policy and trust to accumulate proceeds.

XLIX. PROVD ALWAYS, & it is hby agrd, that it shl be lful for the sd trees or tree, if in their or his uncontrolled discron they or he shl think fit, but durg the life of the sd, *wife*, with her consent in writg, to sell the sd poly [respive pols], or any such substituted poly as afsd, eir by way of surrender to the office or orwise, & they or he shl hold the net proceeds of such sale upon trust to accumulate the same in the way of compound intt durg the then residue of the life of the sd, *husbd* (*c*), by investg the same, & the resultg income thof, in any of the investmts hinbfe authorised, & from & after the death of the sd, *husbd*, shl hold such accumulated fund, & the income thof,

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Lien for premiums paid on policy.

(*b*) As to the lien of trustees upon the policy for premiums paid by them out of their own money, and their power to borrow for the purpose, see *Re Leslie*, 23 Ch. D. 552, where the subject is discussed; *Re Winchilsea*, 39 Ch. D. 168; Goodeve, P. P. 155. Where part of the trust property may consist of land, add here, "and if necy or convenient any moys required for the ppse afsd may be raised, &c." See p. 480, note (*d*).

Accumulation during life of settlor.

(*c*) It is conceived that this is not obnoxious to the Thellusson Act (39 & 40 Geo. 3, c. 98), if the husband is the settlor.

upon the trusts, & subjt to the powers & provons hinbfe decld & contd concerng the investmts representg the sum or sums of moy assured by such poly or pols, & the income thof.

Proviso in case of policy lapsing when husband's life is not insurable.

L. PROVD ALWAYS, & it is hby agrd that if the sd origl poly [pols, or any of them] or any such substituted poly as afsd, shl become void, & the life of the sd, *husbd*, shl not then be insurable, or shl be insurable at a premium more than double the premium for the insurce of a healthy male of his then age, then the sd trees or tree shl, unless in their or his uncontrolled discron they or he shl determine not to do so, yrly, & every yr durg the then residue of the life of the sd, *husbd* (*a*), or such pt thof as they or he shl think fit, set aside out of the income of the sd ——, *the husbd's fortune*, such a sum of moy as shl be eql to double the yrly premium required for insurg in such office as they or he shl select the paymt on the death of a healthy male of the same age as the sd, *husbd*, at the time of such poly [respive pols] becomg void, of the sum wch wd have been payable on the same poly [respive pols] if the sd, *husbd*, had then died, & shl accumulate the same, &c., *as in last form*.

Proviso protecting trustees in case of lapse of policy.

LI. PROVD ALWAYS, & it is hby agrd, that the sd trees or tree shl not be chgeable or responsible for any omission or neglect to enforce the covts hinbfe contd on the pt of the sd, *husbd*, in relon to the sd origl poly [pols, or any of them], or any substituted poly, or to keep up or restore any such poly, psuant to the provons hinbfe contd, or for any such poly lapsg or becomg void by any means whatsr.

Power to pay calls on shares.

LII. PROVD ALWAYS, & it is hby agrd, that it shl be lful fo the sd trees or tree to apply any pt of the capl of the sd trust premes in or towards paymt of the calls on any shares for the time being formg pt of the sd trust premes.

Covenant by husband or by father of husband or wife for

LIII. AND THE SD —— hby covts with the sd, *trees*, that in case the sd intd marre shl take place, he, the sd, *covtor*, his exs or ads, will, in his lifetime or after his dece, & at furthest at the expiron of six calr months from his dece (*b*), pay to the sd trees

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(*a*) See note (*c*) preceding page.

(*b*) If so intended, substitute for this covenant, " will within six calr months from the sd intd marre pay, &c., with intt, &c., from the date of the solemnon of such marre, & further if the sd sum of or tree the sum of £——; AND UNTIL the sd sum of £—— shl be pd will pay to the sd trees or tree intt (*d*) for the same, or for the unpd pt thof for the time being, at the rate of £—— p.c. p.a., by eql half-yrly paymts, the first of such paymts to be made at the end of six calr months from the sd marre: PROVD ALSO that the sd, *covtor*, shl be at full liberty to pay the sd sum of £——, or any pt thof, to the sd trees or tree at any time durg his life, although paymt thof shl not have been called

payment of a gross sum to the trustees, with interest in the meantime (*c*).

£—— shl not be so pd will pay, &c." Omit the provisoes, and insert in their place the provisoes following: "PROVD ALWAYS that the sd trees or tree shl not require paymt of the sd ppal sum of £——, or any pt thof, [*where the husbd covts say*, in the lifetime of the sd, *husbd*, witht the consent in writg of the sd, *wife*] [*where the father of husbd or wife covts, say*, in the lifetime of the sd, *covtor*, witht the consent in writg of the sd, *husbd*, & *wife*, or the survor of them,] & after the death of the sd, *wife*, [such survor,] in the lifetime of the sd, *covtor*, witht the concurrce of all the trees for the time being, if more than one; and that the sd trees or tree shl not be liable for any loss occasd by their or his omission or neglect to enforce the sd covt in the lifetime of the sd, *covtor*."

(*c*) The enactment in the Bankruptcy Act, 1883, s. 47 (2), invalidating covenants for the settlement of future acquired property does not apply to a covenant of this kind: *Ex parte Bishop*, L. R. 8 Ch. 718, decided on the similar section of the repealed Act of 1869. It was formerly the practice to have a separate bond, but it is now usual to secure the payment by a covenant in the settlement. No additional *ad valorem* stamp duty is payable in respect of the covenant, see s. 105 of the Stamp Act, 1891. In determining the value of the estate of the covenantor for the purpose of estate duty, no allowance will be made in respect of the amount due on the covenant at his death: Finance Act, 1894, s. 7 (1), (*a*); and the duty in respect of that sum must be borne by the testator's estate, *Re Gray*, [1896] 1 Ch. 620. Succession duty is payable on a sum covenanted to be paid on death, *Attorney-General* v. *Montefiore*, 21 Q. B. D. 461; but see *Re Higgins*, 31 Ch. D. 142.

As to covenant for payment of a gross sum.

It is sometimes desired to settle a fund where the settlor has only a testamentary power of appointment over it; in that case the matter must rest in covenant, which cannot give a right to specific performance, but only to damages, for the payment of which together with the other debts of the covenantor the fund would be assets if the power is exercised in breach of the covenant, but not if the fund were left to devolve in default of appointment: *Re Parkin*, [1892] 3 Ch. 510, where the covenant was by the intended wife (the donee of the power), and the husband. As to the case of a special power of appointment, see *infra*, p. 489.

As to covenant to settle under testamentary power of appointment.

(*d*) As to the omission of any provision as to interest, see *Re Horner*, [1896] 2 Ch. 188.

Proviso as to sum secured by covenant.

for (*a*): PROVD ALWAYS, that it shl be entirely in the option of the sd, *covtor*, to pay the sd sum of £—— or any pt thof in his lifetime or not, & that after his dece the sd trees or tree shl have full discron eir to call in & compel paymt of the sd sum of £—— or the unpd pt thof, or to leave the same on the secy of the covt hinbfe contd, or on such other secy as may be arranged betn them or him & the hrs, exs, or ads of the sd, *covtor*, for such time as the sd trees or tree may think pper, witht being liable for any loss thby occasd: AND IT IS HBY AGRD that the sd ppal sum hinbfe covted to be pd by the sd, *covtor*, & the investmts representg the same, & the intt & income thof resply shl be held & applied by the sd trees or tree upon the trusts, &c., *as in form* XLV., *saying*, "sd ppal sum," *instead of* "sd poly moys."

Declaration of trust.

Covenant for payment of a sum to trustees on death of covenantor (*b*).

LIV. AND THE SD —— hby covts with the sd, *trees*, that if the sd intd marre shl take place, the exs or ads of him the sd, *covtor*, shl within six calr months after his death pay to the sd trees or tree the sum of £——, with intt thron at the rate of —— p.c. p.a. from the day of his death: PROVD ALWAYS that the sd, *covtor*, shl be at liberty to pay the sd sum of £——, or any pt thof, to the sd trees or tree at any time durg his lifetime. *Declaron of trust as in last form.*

Covenant by father of husband or wife to make up his or her reversionary interest to a given sum (*c*).

LV. AND THE SD, *father*, hby covts with the sd, *trees*, that if the sd intd marre shl take place, & if at the death of the [survor of the] sd, *father*, [& —— his wife], the pt or share or pts or shares by the sd deed-poll of the —— day of ——, [*or*, hby] appted to, or in favour of, the sd, *husbd or wife*, or to wch he [she] may become entled in default of apptmt, of or in the ppty comprd in, or subjt to the trusts of the sd indre of the —— day of ——, [*or*, the will & codls of the sd ——] shl not amt in value (computed in such mner as the sd trees or tree shl think pper) in the whole to the sum of £——, then the exs or ads of the sd, *father*, shl within —— calr months after

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(*a*) But for this provision, the trustee might have no power to accept payment in advance, see 3 Dav. Prec., part 2, p. 866; but see *Anson* v. *Potter*, 13 Ch. D. 141.

(*b*) See note to form LIII. As to proof in bankruptcy under this covenant, see *Barnett* v. *King*, [1891] 1 Ch. 4. Where the instructions are to insert a covenant to leave a sum by will to be held upon the trusts of the settlement, this form should be adopted. See 3 Dav. Prec., p. 804, n.

(*c*) See notes to last form.

the death of the [survor of the] sd, *father*, [& —— his wife] pay to the sd trees or tree such a sum of moy as, with the value (computed as afsd) of the sd pt or share, or pts or shares, shl make up the sum of £——, with intt thron at the rate of —— p.c. p.a. from the death of the [survor of the] sd, *father*, [& —— his wife]: *Declon that the ppal sum, &c., shl be held upon the like trusts as* "any ppal moys to be reced by the sd trees or tree from or in respt of the pt or share so appted as afsd, &c.," *see form* XLV.

Covenant by wife's father to secure to her an equal share of his estate on his death (*d*).

LVI. AND THE SD —— hby covts with the sd, *trees*, that if the sd intd marre shl take place & the sd, *wife*, or any issue of the sd intd marre shl survive him the sd, *covtor*, the hrs, exs, or ads of him the sd, *covtor*, shl out of his este as soon as may be after his death pay, assure, or transfer to the sd trees or tree not less than an eql aliquot pt accdg to the no. of the chln of the sd, *covtor*, by his deced wife who shl be livg at his death or die in his lifetime leavg issue livg at his death (that is to say, such a proportion as the no. one shl bear to the whole no. of such chln) of the residue of the real & psonal este of the sd, *covtor*, at his death, or the proceeds of the sale & conversion thof, wch shl remain after paymt of the duties payable on his death in respt of or out of the ppty wch at the time of his death he shl be able to dispose of by will, & of his funl & testy expses & debts (other than the debt constituted by or arisg under this psnt covt & other than any debt contracted voluntarily or in conson of marre): PROVD ALWAYS, that for the ppose of ascertaing the amt or value of such residy este, any moy or ppty over wch the sd, *covtor* (whether alone or jtly with any other pson), has acquired or may acquire a special power of

Proviso as to special powers of appointment (*e*).

As to covenant for securing to a child an equal share.

(*d*) Settlors sometimes insist on this mode of providing for a child on marriage, and the form is therefore given; but the contingencies which have to be guarded against are so various and difficult to provide for (especially as the draftsman is seldom fully informed as to the covenantor's circumstances), and the complications which are liable to arise in the event of the covenantor making dispositions of part of his estate in favour of his other children in his lifetime, or making testamentary dispositions not in conformity with, or in disregard of the covenant and otherwise, are such as to render this form of covenant highly inexpedient and to be deprecated; see 3 Dav. Prec., p. 805, note. A covenant to secure a specific sum on the covenantor's death, as in form LIV., is much preferable.

(*e*) This avoids restricting the exercise of the power, as to which see *infra*, p. 493, note (*b*).

apptmt or disposon (whether by deed or orwise) exercisable in favour of his sd chln or their issue or any of them, shl (whether such power be actually exercised wholly or partially, or the ppty subjt thto shl devolve on such chln or issue or any of them in default of apptmt) be considered as formg pt of the divisible residue of the este of the sd, *covtor*, AND further, that for the ppose afsd any other moy or ppty wch the sd, *covtor*, has given or appted or agrd to give or appt or may hrafter durg his lifetime give or appt or agree to give or appt to any of his sd chln (other than the sd, *wife*,) or their issue upon marre or orwise for or towards the advancemt or portion of any such child, chln, or issue, shl not (though constitutg a debt) be deducted, but shl be considered as formg pt of the divisible residue of his este; PROVD ALWAYS, & it is hby further agrd & decld, that any moy or ppty wch the sd, *covtor*, may think fit in his entire option to pay, assn, appt, or transfer in his lifetime to the sd trees or tree shl be taken in or towards satisfon of the covt of the sd, *covtor*, hinbfe contd, & shl for the ppose of the sd covt be estimated at the current or market value, or at such valuon or estimate of value as may be agred betn the sd trees or tree & the sd, *covtor*, AND the sd, *covtor*, doth hby further covt with the sd, *trees*, that from the time at wch the title to any ppty shl devolve in posson on the sd trees or tree under the covt of the sd, *covtor*, hinbfe contd until the actual transfer, paymt, or approprion thof, intt at the rate of four p.c. p.a. shl be payable out of the este of the sd, *covtor*, to the sd trees or tree (to be applicable as current income for the pposes hrof) upon such a sum as shl be eql to the amt or value of the ppty the title to wch shl have so devolved in posson; PROVD ALWAYS, & it is hby agrd & decld, that the sd trees or tree shl have the fullest powers of agreeg, settlg, & arranging with the sd, *covtor*, his hrs, exs, or ads, & all psons claimg under him, all questions of amt or value, approprion, intt, & of every other descripon arisg under or in respt of the covts on the pt of the sd, *covtor*, hinbfe contd, & especially of determing what shl be deemed a satisfon of such covts, & of acceptg in or towards satisfon of the sd covts any ppty in any condon or state of investmt, & accdg to any valuon or estimate of value in the entire discron of the sd trees or tree, & of acceptg on such evidce as they may think fit any statemts as to the ppty &

Covenant to pay interest.

Powers to trustees.

este, debts & liabilities of the sd, *covtor*, or any other mres wch may be material with referce to the operon of the covts hinbfe contd, & may approve & settle accts & give effectual reles & dischges so as for all the pposes afsd to have all the powers of an absolute & not merely a fiduciary owner, & effectually & conclusively to bind all psons intted under these psnts; AND it is hby agrd & decld that the sd trees or tree shl obtain the transfer or paymt (accdg to the nature of the ppty & other circes) of the ppty devolvg on or comg to them or him under the covt of the sd, *covtor*, hinbfe contd, & may eir retain the same in its actual condon or state of investmt, or shl at any time or times, with the consent in writg of the sd, *husbd*, & *wife*, durg their lives, & of the survor of them durg his or her life & aftwds at the discron of the sd trees or tree, sell or convert into moy the same premes or any pt or pts thof, &c., &c.

Declaration of trust.

LVII. AND THE sd, *covtor*, hby covts with the sd, *trees*, that if the sd intd marre shl take place he the sd, *covtor*, will pay to the sd trees or tree the yrly sum of £—— durg the life of him the sd, *covtor*, commencg from the sd intd marre, *or*, "such yrly sum as is hinafter mentd, that is to say" [durg the jt lives of the sd, *covtor*, & *husbd*, the yrly sum of £——, commencg from the sd intd marre, & in case the sd, *husbd*, shl die in the lifetime of the sd, *covtor*, then durg the remr of the life of the sd, *covtor*, if & so long as the sd, *wife*, or any issue of the sd intd marre, shl be livg, the yrly sum of £——, commencg from the death of the sd, *husbd*,] [durg the life of the sd, *covtor*, if & so long as the sd, *husbd*, or the sd, *wife*, or any issue of the sd intd marre shl be livg, the yrly sum of £——, commencg from the sd intd marre, & after the death of the sd, *covtor*, in case the sd K., the wife of the sd, *covtor*, shl survive him, then durg the remr of the life of the sd K., if & so long as the sd, *husbd*, or the sd, *wife*, or any issue of the sd intd marre shl be livg, the yrly sum of £——, commencg after the death of the sd *covtor*] [durg the jt lives of the sd, *husbd*, & *wife*, the sum of £——, commencg from the sd intd marre, & in case the sd, *wife*, shl die in the lifetime of the sd, *husbd*, leavg any issue of the sd intd marre, then durg the

Covenant for payment of annuity to trustees. With variations (*a*).

(*a*) As to stamp duty in respect of this covenant, see the Stamp Act, 1891, s. 105.

remr of the life of the sd, *husbd,* if & so long as any issue of the sd intd marre shl be livg, the yrly sum of £——, commencg from the death of the sd, *wife*], such sum of £—— [or £——, as the case may be] to be payable by eql half-yrly [qtrly] paymts, on the —— day of ——, &c., *or,* "on the usual qtr days," but to be deemed to accrue from day to day,

Charge of annuity on life interest under prior settlement.

[AND THE sd, *covtor,* doth hby chge the sd annl sum of £——, [sum of £——, or £——, as the case may be] hinbfe covted to be pd by him on his life intt under the sd indre of settlemt of, &c., in the sd trust premes [a share of wch is hby settled], & doth hby direct that the trees or tree for the time being of the sd indre of settlemt shl from time to time pay such annl sum accdly out of the income & annl produce of the same trust premes in satisfon of the covt of the sd, *covtor,* in that behalf hinbfe contd;] PROVD ALWAYS, that the sd trees or tree shl not be liable for any loss occasd by their or his omission or neglect to enforce the covt lastly hinbfe contd.

Declaration of trust of annuity.

LVIII. AND IT IS HBY AGRD & DECLD that the sd trees or tree shl stand possed of the sd yrly sum of £—— [or £——, as the case may be, for the time being] payable under the covt of the sd, *covtor,* hinbfe contd, upon trust to [pay the same to the sd —— or his assns durg his life & aftwds to (*a*)] pay or apply the same to the pson or psons for the pposes & in the mner to whom & for & in wch the income of the sd husbd's [wife's] fortune, *or as the case may be,* wd for the time being be payable or applicable under or by virtue of these psnts [if the same had fallen into posson].

Proviso as to taking legacy in satisfaction of annuity.

LIX. PROVD ALWAYS that if the sd, *covtor,* shl by will or codl beque any legacy or ppty to or in trust for the sd, *husbd,* or the sd, *wife,* or to or in trust for the sd, *husbd,* & *wife,* & their chln or issue or any of them, then (unless the sd, *covtor,* shl by will or codl or orwise in writg direct the contrary) if such legacy or ppty shl amt in value to the sum of £——, the sd anny of £—— shl not become, *or,* "shl cease to be," payable, & if the sd legacy or ppty shl be less in value than £——, then the same shl go & be accepted in redon proportionately (accdg to the value thof) of the sd anny of £——.

(*a*) These words will be inserted where the person who takes the first life interest in the annuity does not take the first life interest in any other part of the settled property.

Covenant restricting the exercise of a special testamentary power of appointment among children (*b*).

LX. AND THE SD —— doth hby covt with the sd, *trees*, that in case the sd intd marre shl take place, he, the sd, *covtor*, will not exercise the power of testy apptmt given to him by the sd indre of settlemt, of, &c., as afsd, so as by any means to reduce the share or intt of the sd —— in the trust funds & premes now or hrafter subjt to the trusts of the same indre, to a less amt than the share to wch the sd —— wd be entled in default of any exercise of the sd power of testy apptmt, & if the same trust premes had wholly devolved under the trust in default of apptmt in the sd indre of settlemt contd, or to postpone the vestg in posson of such share or intt beyond the period of the death of him the sd, *covtor*.

Trust for sale of real estate.

LXI. UPON TRUST that the sd, *trees*, or the [survors or] survor of them, or other the trees or tree for the time being

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As to covenants restricting the exercise of a testamentary power of appointment.

(*b*) It is established by repeated decisions that a power of appointment among children may (independently of the C. A., 1881, s. 52) be released, whether the power is exercisable either by deed or will (*Smith* v. *Death*, 5 Mad. 371; *Smith* v. *Houblon*, 26 Beav. 482; *Re Radcliffe*, [1891] 2 Ch. 662, [1892] 1 Ch. 227; *Re Somes*, [1896] 1 Ch. 250), or by will only (*Horner* v. *Swann*, T. & R. 430); and in *Davies* v. *Huguenin*, 1 H. & M. 730, a covenant (in the negative form) by the donee of such a testamentary power not to exercise it so as to diminish the portion of a child about to marry, was held to operate as a release *pro tanto* of the power and to be clearly good (and see Sug. on Pow. p. 90; Chance Pow. Suppl. p. 111; Farwell Pow. p. 16); but as regards merely testamentary powers, although the point has been long settled, doubts have been expressed as to whether these decisions are sound in principle, see especially *Coffin* v. *Cooper*, 2 Dr. & Sm. 365; and the judgment of Jessel, M.R., in *Palmer* v. *Locke*, 15 Ch. D. 294. As to the operation of the enactment in s. 52 of the C. A., 1881, as to releases of or covenants not to exercise powers, see Farwell, p. 12.

A covenant (in the affirmative form) by the donee of a merely testamentary power of this nature to appoint not less than a certain share or sum to a particular child on marriage or otherwise, seems to rest on a different footing. Great doubt has been expressed, though the point does not appear to have been expressly decided, as to whether such a covenant is not void (see *Thacker* v. *Key*, L. R. 8 Eq. 408; *Palmer* v. *Locke*, *ubi supra*); but appointments made in pursuance of such covenants were upheld in *Coffin* v. *Cooper* and *Palmer* v. *Locke*; and see *Bulteel* v. *Plummer*, L. R. 6 Ch. 160. In *Thacker* v. *Key* the covenant was held satisfied by the sum agreed to be appointed coming to the child in default of appointment.

See further on this subject Vaizey on Settlements, pp. 1494, *et seq.*, where, however, the remark (at p. 1496), as regards the validity of the release of a special power exercisable by *deed*, that the release practically operates as an appointment, requires qualification where an object of the power has died, since an appointment cannot be made to a deceased child.

It is conceived that the covenant in the text, being in the negative form, is valid, according to *Davies* v. *Huguenin*, *ubi supra*.

Variations for leaseholds (*a*).

of these psnts (hinafter called the sd trees or tree) shl at the reqt in writg of the sd, *husbd*, & *wife*, or the survor of them, & after the dece of such survor, at the discron of the sd trees or tree, sell the sd hds & premes hby assured (*b*).

Settlement by way of trust for sale.

(*a*) Land, when not entailed, is very commonly settled, by means of a trust for sale, as personal estate, a mode of settlement which, by enabling the ordinary forms for settlements of personalty to be used in declaring the trusts of the proceeds, is very convenient in practice, especially where the settlement also comprises personalty. It is usual, at any rate where the property or any part of it is likely to be sold, to effect the settlement by two deeds, the first containing the conveyance in trust for sale, with the powers of leasing, &c., if required, until sale, and the second deed, the settlement, containing the trusts of the proceeds, in order that the settlement may not become part of the title to the land. If, in the event, the land is retained unsold this object would in general be defeated; but if on the ultimate division of the settled property the land were allotted to a beneficiary, the transaction might take the form of a conveyance on sale to him under the trust for sale, so as to prevent the settlement coming on to the title.

Provisions of S. L. Acts as to settlements by trust for sale.

By the S. L. A., 1882, s. 63, the Act is extended to a settlement of land in trust for sale, and the person entitled to the rents until sale is to be deemed the tenant for life thereof under the Act, thus conferring upon such person all the statutory powers of sale, leasing, &c.; but by the Amending Act of 1884, s. 6 (1), the trustees for sale are enabled to execute any of their trusts and powers without the consent of the tenant for life (unless expressly required by the settlement), and by s. 7, the tenant for life cannot execute any of his statutory powers without obtaining an order of Court, which will then suspend the powers of the trustees.

As to the powers given by the Act and the amending Acts to tenants for life, see Vol. I., p. 467, note. As to the right of a tenant for life under such a settlement to mineral rents, see *Re Ridge*, 31 Ch. D. 504.

As to frame of settlement by trust for sale.

After the passing of the Act of 1882, where the settlement by trust for sale was effected by two deeds, inasmuch as by the effect of s. 63, coupled with s. 56, the trustees could not sell without the consent of the tenant for life, it became necessary, in order that the settlement might not become part of the title, to declare the trusts of the rents until sale, so far, at any rate, as the life estates were concerned, by the conveyance; but the Act of 1884 renders this unnecessary except in the event of the tenant for life obtaining an order under s. 7, which is seldom done; and the old practice of declaring such trusts by the settlement may therefore be adopted; sometimes, in view of the possibility of the tenant for life desiring to exercise the statutory powers, a statement is inserted in the conveyance as to who is the tenant for life under the settlement.

Registered land.

As to registered land, see Vol. I., p. 478.

Provisions of T. A., 1893, as to powers of sale.

(*b*) Or, 'granted,' 'assigned,' or, 'covted to be surrendered,' or as the case may be. The usual subsidiary provisions formerly inserted in trusts for sale as to selling by auction or private contract, &c., &c., are now supplied by the T. A., 1893, s. 13, unless a contrary intention is shown. More special powers of dealing with prior incumbrances may sometimes be desirable, as at p. 23, note (*c*). See as to this, the C. A., 1881, s. 5, and the S. L. A., 1882, ss. 5, 24.

Variation

If so desired, add, " And to make such sale cir wholly in

Power to sell for fee farm rent.

LXII. AND IT IS HBY FURTHER AGRD that the sd hds & premes or any pt or pts thof may be sold by the sd trees or tree under the trust for sale hinbfe contd, in conson of a perpetual yrly rentchge to be limd or reserved out of & secd upon the hds sold or any pt thof or any other hds or ptly in conson of such a rentchge & ptly of a gross sum of moy & that any such rentchge shl be limd or reserved & secd & made payable in such mner as to the sd trees or tree shl seem expedient: And further that every such rentchge shl be held by the sd trees or tree upon the like trust for sale & other trusts & subjt to the like powers & provons (so far as the same are subsistg & applicable) as are hrin decld & contd of & concerng the sd hds & premes hby assured.

Declaration of trust of sale moneys and rents till sale where the convey-

LXIII. AND SHL out of the moys arisg from any such sale pay the costs of such sale or orwise incurred in respt of the premes, & shl hold the residue of such sale moys upon the trusts & subjt to the powers & provons hinafter decld concerng the same, & shl pay & apply the net rents & profits of the same premes or of the unsold pt thof for the time being (c) to the

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for sale for fee farm rent.

conson of a gross sum of moy or wholly in conson of a perpetual yrly rentchge to be limd or reserved out of & secd upon the hds sold or any pt thof, or any other hds, or ptly of a gross sum of moy & ptly of such rentchge as afsd, & so that in case the sd premes or any pt thof shl be sold wholly or ptly in conson of a perpetual rentchge, every such rentchge shl be held upon the like trust for sale, & other trusts, powers, & provons (so far as applicable) as if the same had been hds pchased under the power hinbfe contd."

Power to apportion leasehold or fee farm rents.

In a settlement of leaseholds held under one lease, or lands subject to an entire fee farm rent, which admit of subdivision, add :—" with power on any sale of pt of the hds comprd in a lease at a rent or of pt of the land subjt to an entire perpetual rentchge to apportion such rent or rentchge & to make such provon for securg the paymt of the apportioned pts thof & the pformce & observce of the covts & condons of the lease or grt affectg the sevl pts of the premes & for the mutual indemnity of the pties by the creation of powers of entry & orwise as may be deemed pper, & on the sale of pt of the hds comprd in a lease to effectuate the same by granting an underlease," see Vol. I., p. 269.

Variation

(c). If there is a power to sell for a rent-charge, insert here, " & if any of ance and settlements are effected by one deed.

pson or psons & for the pposes to & for wch the income of the investmts hinafter directed to be made of the net moys to arise from the sale thof wd be payable or applicable under the trusts hinafter contd if such sale & investmt were actually made.

The same, where the conveyance and settlement are effected by two deeds (to be inserted in the conveyance) (*a*).

LXIV. AND SHL out of the moys arisg from any such sale pay the costs of such sale or orwise incurred in respt of the premes, & shl hold the residue of such sale moys, & the rents & profits of the sd hds & premes until the same resply shl be sold, upon the trusts & subjt to the powers & provons decld & contd concerng the same resply in & by an indre already prepared, intd to bear even date with & to be exted immedly after these psnts, & to be made betn, *pties* [the same pties as these psnts].

Declaration of trust of rents till sale where two deeds (to be inserted in settlement) (*a*).

LXV. PROVD ALWAYS & it is hby agrd that the sd trees or tree shl pay and apply the net rents and profits of the sd hds & premes assured by the hinbfe recited indre of even date hwith, *the convce in trust for sale,* until the same shl be sold or of the unsold pt thof for the time being to the pson or psons & for the pposes to whom and for wch the income of the investmts hinbfe directed to be made of the net moys to arise from the sale thof wd be payable or applicable under the trusts hinbfe contd if such sale & investmt were actually made.

Power to manage real estate until sale (*b*).

LXVI. PROVD ALWAYS, & it is hby agrd, that it shl be lful for the sd trees or tree, after the sd intd marre, & bfe all the sd hds hby assured (*c*) shl be sold, to manage or superintend the managemt of the same premes, or of the unsold pt thof for the time being, includg power to cut timber & underwood for sale,

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for sale for fee farm rent.

the sd premes shl be sold in conson of a perpetual rentchge, shl, until such rentchge shl be sold, pay & apply the same."

(*a*) See p. 494, note (*a*). The declaration of the trust of the rents till sale doubtless expresses no more than would be implied: see *Hope* v. *d'Hédouville*, [1893] 2 Ch. 361; but it should be inserted.

As to stocking farms, &c.

(*b*) In the case of agricultural property it may be desirable to authorise the expenditure of capital money in stocking farms in hand, and in payment of compensation to outgoing tenants, as above; see also forms *infra*, SETTLEMENTS REAL, and WILLS.

It should be borne in mind that a power to "manage" does not (as is sometimes supposed) include power to lease, for which a special power should be inserted; see forms *infra*.

(*c*) Or, 'grted,' 'assned,' or 'covted to be surrendered,' or as the case may be.

repairs, or orwise, to open & work mines, minls, quarries, & brickfields, & to erect, pull down, rebuild, add to, & repair houses & other bldgs, & to drain & make roads & fences, & orwise to improve all or any of the sd premes, & to insure houses & bldgs agst loss or damage by fire (*d*) or tempest, & to make allowces to & arrangemts, with tenants & others, includg power to condone and to grant licences to commit breaches of covenant, & to accept surrenders of leases & tenancies, & to stock, equip, work & carry on farms in hand, & genlly to deal with the ppty as if they or he were absolute owners or owner thof, witht being responsible for any loss or damage that may happen thby (*e*): AND ALSO power to delegate eir exply or by implicon durg such period or periods, & upon such terms as they or he shall think fit, the exercise of all or any of the powers of managemt & improvemt hinbfe contd to the sd, *husbd*, or the sd, *wife*, or to any other pson intted under these psnts, witht being responsible for any loss occasd thby: AND ALSO power conclusively to determine eir by way of anticipon or orwise, & eir exply or by implicon what pt, if any, of the produce of timber, mines, minls, quarries, or brickfields, shl be applied as capl, & what pt, if any, as income, & so that such pt as shl be determined to be capl shl be disposed of as if the same were proceeds of a sale under the trust hinbfe contd: AND ALSO power to raise & pay the costs & expses attendg the exercise of the sd powers of managemt & improvemt out of the income (*f*), or as to any moys wch the sd trees or tree may be

To delegate powers.

Statutory power to insure.

(*d*) Under the T. A., 1893, s. 18, trustees can without special authority insure buildings up to three-fourths of the full value, and pay the premiums out of income.

(*e*) Where the person entitled in possession is an infant, most of these powers are given to the trustees by the C. A., 1881, s. 42, if that section applies to a settlement by trust for sale, which however is doubtful; see p. 479, note.

As to payment for improvements out of income.

(*f*) Although the expense of ordinary repairs and maintenance is, of course, properly payable out of income, the payment out of income of the cost of permanent improvements which would have the effect of "postponing the beneficial enjoyment" of the property cannot lawfully be authorised, as it would amount to an accumulation within the Thellusson Act, 39 & 40 Geo. 3, c. 98, unless the case were within any of the exceptions in that Act. The building of a new house on the land would clearly be of that nature, but it is of course impossible to draw the line; see *Vine* v. *Raleigh*, [1891] 2 Ch. 13; *Re Mason*, [1891] 3 Ch. 467. The Accumulations Act, 1892 (55 & 56 Vict. c. 58), extends the Thellusson Act by prohibiting accumulation "for the purchase of land only," except in the one case of the minority of the person entitled in possession; possibly the erection of new buildings on vacant land might be liable to pay under a statute, & any moys expended in improvemts of a permanent nature, or in stockg or equippg farms in hand, or in payment of valuons or compenson to outgoing tenants, wch the sd trees or tree shl consider to be pperly or reasbly payable out of capl, by mtge or sale under the trust for sale hinbfe contd or orwise out of the capl of the sd trust premes.

The same. Short form.

LXVII. AND IT IS HBY AGRD that it shl be lful for the sd trees or tree to manage the sd hds & premes until the same shl be sold, with all the powers in that behalf of absolute owners, includg power to cut timber & underwood for sale, repairs, or orwise, & to repair & insure houses & bldgs, & to make allowances to & arrangemts with tenants & others & to accept surrenders of leases & tenancies.

Power to trustees to grant leases of unsold land (*a*).

LXVIII. AND IT IS HBY AGRD & decld that it shl be lful for the sd trees or tree to demise all or any of the sd hds & premes

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held to amount to a purchase of land within that Act, as it has been in other cases: *Drake* v. *Trefusis*, L. R. 10 Ch. 364, but consider *Re Dawson*, 39 Sol. J. 557.

Leasing powers, effect of S. L. Acts.

(*a*) In a settlement by trust for sale these leasing powers, by virtue of the S. L. A., 1884, ss. 6 & 7, operate independently of the powers of the S. L. A., 1882, and can be exercised without the consent of the tenant for life, unless he has obtained an order of Court enabling him to exercise the statutory powers; see p. 494, note. This form would suffice for ordinary cases, but form LXXIII., p. 501, giving this and other powers by reference to the S. L. Acts, and extending if need be the statutory powers, is much more comprehensive and to be preferred. As to the statutory leasing powers, see *infra*, SETTLEMENTS, REAL.

As to vesting leasing powers in tenant for life.

The leasing as well as other powers have usually, in settlements by trust for sale, been given to the trustees; but where many leases have to be granted the powers are often conveniently vested in the tenant for life to avoid constant applications to the trustees. A lease of freeholds by a tenant for life under an express power would operate as an appointment of the use so as to pass the legal estate under the Statute of Uses, but a lease of leaseholds or copyholds would operate in equity only, and the concurrence of the trustees would be necessary to pass the legal estate. Under the S. L. A. a tenant for life can grant a legal lease of leaseholds or copyholds as well as freeholds, and if additional or larger powers are given to him by the settlement they will, unless otherwise expressed, operate in like manner, under s. 57 of the Act. But it should be noted that that section only applies where such powers are given to the donee or donees of the statutory powers, or to the trustees. Where an express leasing power (whether more extensive than the statutory powers or not) as to leaseholds or copyholds is given to any person other than such donee or donees or the trustees, the following clause may be added:—

Provision as to concurrence of trustees in leases.

"PROVD ALWAYS, & it is hby agrd & decld, that the sd trees or tree shl, if required by the sd, *husbd*, & *wife*, or the survor of them, be bound (but witht thby incurrg any responsibility) to hby assured (*b*), & wch shl for the time being remain unsold, for any term of yrs not exceedg twenty-one yrs [or for a ming lease not exceedg forty yrs, or for a bldg or improvg lease not exceedg ninety-nine yrs] to take effect in posson or within six calr months from the date of the lease, *or*, "for any term of yrs, eir in posson or revon, & for any ppose," with or witht takg a fine or prem, & upon such terms & condons in all respts, as they or he shl think fit, but so that any sum reced as a fine or prem shl be applied as if the same were proceeds of a sale under the trusts hinbfe contd, & so that in case any lease shl be grted on the surrender or determinon of a then existg or prior lease or tenancy, the value of the intt so surrendered, or the tenant rt or claim to compenson for improvemts or orwise in respt of such tenancy, may be taken into acct in fixg the rent & terms of the new lease (*c*).

Power to tenant for life, &c., to grant leases of unsold land (*d*).

LXIX. AND IT IS HBY AGRD that it shl be lful for the sd, *husbd*, durg his life, & after his dece for the sd, *wife*, in case she shl survive him, durg her life, & after the dece of the survor of them [*or*, for the sd, *wife*, durg her life, & after her dece for the sd, *husbd*, until the failure or determinon of the trust hinbfe decld in his favour (*e*) & aftwds], for the sd trees or tree to demise, &c., *as in last form*.

Addition to powers of sale and leasing where a reversionary interest is settled.

LXX. PROVD ALWAYS & it is hby agrd that no sale shl be made under the trust in that behalf hinbfe contd of any of the sd hds wch are revy until the same shl fall into posson, unless in the opinion of the sd trees or tree an earlier sale wd be benefl [provd nevs that the same hds or any pt thof may be

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concur in any lease made by them, him, or her, under the power lastly hinbfe contd, or shl at any time aftwds, on being so required, or may at their or his discron confirm the same by demisg the legal este to the lessee for the term grted by such lease, but so that any such demise by way of confirmon shl contain pper provons for annexg the benefit of the lessee's covts & condons contd in the lease to the legal revon."

(*b*) Or, "grted," "assned," "covted to be surrendered," or as the case may be.

(*c*) Compare the S. L. A., 1882, s. 13 (5), as to this; and see the Agricultural Holdings (England) Act, 1883, s. 43.

(*d*) See last page, note.

(*e*) The power might be given to the husband notwithstanding the forfeiture of his life interest.

sold or leased under the trusts or powers hinbfe contd durg the lifetime of the sd, *prior tenant for life*, with his concurrce, so as to effect a sale in posson, or a lease to take effect in posson or within six calr months from the date of the lease, & so that in case of any sale durg the lifetime of the sd, *prior tenant for life*, the sd trees or tree shl with his consent in writg invest the net proceeds of such sale in or upon, &c., *investmts*, p. 459, *et seq.*, & may with such consent as afsd, from time to time vary such investmts: AND SHL durg the life of the sd, *prior tenant for life*, pay the income of the sd proceeds of sale & the investmts representg the same to him or his assns: AND AFTER HIS DEATH shl hold the same proceeds of sale & the investmts thof upon the trusts, *&c., as in form* LXIII. *or* LXIV.] (*a*).

The same, where an undivided share is settled.

LXXI. PROVD ALWAYS & it is hby agrd that the sevl trusts & powers of sale, leasg, & managemt hinbfe contd may be exted eir in relon to the undivided pt or share [pts or shares] hby assured (*b*) solely, or in conjon with the pson or psons entled to or havg power in that behalf over the other undivided pt or share, pts or shares, of & in the sd hds & premes in relon to the entirety of the sd premes or any pt thof, & so that in the latter case any proceeds of sale, rents, expses, or outgoings may be apportioned in such mner as the sd trees or tree shl think fit, after the same shl have been reced, pd, or incurred [& that notwg that any of the sd trees or a sole tree, may be entled to or intted in or may be a tree of any of the other pts or shares of the sd premes (*c*)].

Power of partition.

LXXII. PROVD ALWAYS & it is hby agrd that it shl be lful for the sd trees or tree to concur with the pson or psons entled to or havg power in that behalf over the other pt or share, pts or shares, of or in the sd hds & premes, in makg a parton of the same premes or any pt thof, [& that notwg that any of the sd trees or a sole tree may be entled to or intted in or may be a tree of any of the other pts or shares of or in the same (*c*),] &

(*a*) If the prior tenant for life is able to sell or lease under the S. L. A., 1882, the part bracketed might be omitted.

(*b*) Or, "grted," "assned," or "covted to be surrendered," or as the case may be.

(*c*) This addition is desirable, as it often happens, owing to relations being appointed trustees, that the trustees of a settlement comprising an undivided share are interested in the other shares.

to give or rece moy for equality of parton, & to make any such parton upon such terms & condons as may be thought pper; and for the pposes afsd or any of them, to exte & do all such assurces & things as may be deemed necy or expedient, & the hds wch shl on any such parton be taken in sevlty, & the rents & profits thof resply shl be held upon & subjt to such trusts, powers, & provons as shall be subsistg or capable of takg effect by virtue of these psnts concerng the sd pt or share, pts or shares, hby settled, & the rents & profits thof resply: PROVD ALWAYS & it is hby agrd that any moys agrd to be pd for equality of parton may be pd out of any moys in the hands of the sd trees or tree arisg from a sale under the trusts hinbfe contd, or settled upon the same trusts as the moys so arisg, or may be chged upon or raised by mtge of the hds taken in sevlty as afsd: AND ANY MOYS receable for equality of parton shl be pd to the sd trees or tree & held by them or him upon the same trusts as if the same had arisen from a sale under the trusts afsd.

Clause giving powers of leasing, &c., by reference to S. L. Acts, and extending powers of Acts (*d*).

LXXIII. AND IT IS HBY AGRD that it shl be lful for the sd trees or tree to exercise in relon to the sd hds & premes hby assured (*e*), all such powers of leasg & acceptg surrenders of leases [& partoning] & enterg into, varyg, & rescindg contracts in that behalf, & powers incidental or subsidiary thto resply, & all such other powers of every descripon wch may be applicable to the premes as are by the Settled Land Acts, 1882 to 1890, conferred on tenants for life, [& also (by way of extension or enlargemt of the powers of the sd Acts, & to the intent that the addonal or larger powers hinafter conferred shl as far as may be operate & be exercisable in like mner, & with all the like incidents, effects, & consequces, as if the same had

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(*d*) See p. 494, note, and p. 498, note. This power may be readily adapted to the case where it is desired to give full leasing powers to the tenant for life by reference to the Acts; see p. 498, note. Where a settlement by trust for sale is effected by two deeds, it may sometimes be desirable to insert in the conveyance a power to the trustees to raise money by mortgage "for any ppose required by" the settlement of even date (*e.g.*, for the advancement of a child) in general terms; with a proviso protecting mortgagees from the necessity of enquiry into those trusts, &c.; see forms in SETTLEMENTS, REAL.

As to power to raise money by mortgage.

(*e*) Or, "grted," "assned," "covted to be surrendered," or as the case may be.

been conferred by the sd Acts) (*a*), power to, &c., *further powers, e.g., to grt leases for longer terms, to give the lessee an option of pchase, or to make grts at fee farm rents, &c., see* SETTLEMENTS, REAL].

Provision as to mansion house and notices under the S. L. Acts (*b*).

LXXIV. AND IT IS HBY FURTHER AGRD that the powers of leasg [& other powers of every descripon] hby conferred on the sd, *tenant for life or other donee or donees*, in relon to the sd hds & premes hby assured by referce to the Settled Land Acts, 1882 to 1890, & all powers incidental or subsidiary thto resply may be exercised as regards the sd mansion house of —— or any residce or dwg house, pleasure grounds & park & the lands usually occupied with the sd mansion house or other residce or dwg house, wch may for the time being be subjt to the trust for sale hinbfe contd, or any pt or pts throf resply witht the consent of the sd trees or tree or any order of Ct, & as to all the sd hds & premes witht givg any notice of the intention to exercise the same to any tree or the solor of any tree of these psnts.

S. L. A., 1882, to include amending Acts.

LXXV. AND IT IS HBY FURTHER AGRD that any referce hby made to the Settled Land Act, 1882, or to the Settled Land Acts, 1882 to 1890, shl be deemed to extend to & include any Act or Acts amendg or extendg or re-enacting the same for the time being in force wch may be applicable to the case.

Power to invest in purchase of land, with ancillary clauses (*c*).

LXXVI. PROVD ALWAYS, & it is hby agrd, that it shl be lful for the sd trees or tree, durg the lives or life of the sd, *husbd & wife*, or the survor of them, at their, his, or her reqt in writg, & aftwds at the discron of the sd trees or tree, to invest any moy arisg from the sale or conversion (wch the sd trees or tree are hby authorised to make for such ppose) of any invest-

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As to powers additional to the statutory powers.

(*a*) By s. 57 of the S. L. A., 1882, any powers conferred by the settlement on the tenant for life or trustees additional to or larger than those of the Act, are to operate and be exercisable in like manner as if they were conferred by the Act, unless a contrary intention is expressed. The intention that any additional powers given should so operate should, however, be expressed.

(*b*) This form is appropriate to a settlement by trust for sale where powers of leasing, &c., are given to the tenant for life as in form LXIX. See as to mansion houses, &c., the Act of 1890, s. 10; and as to notices the Act of 1882, s. 45, as amended by the Act of 1884, s. 5, and the Act of 1890, s. 7; and as to settlements by trust for sale, see p. 494, note.

(*c*) As to what descriptions of hereditaments may be purchased under a power of this nature, see Lewin on Trusts, 567 *et seq*. This power renders the trust property "liable to be laid out in the purchase of land" within ss. 32 and 33 of the S. L. A., 188 *Re Soltau*, [1898] 2 Ch. 629.

mts of the sd trust premes (*d*), or any other capl moy subjt to the trusts of these psnts, in the pchase of any manors, messes, lands, or hds, in England or Wales but not in [or] Ireland, of freehd, copyhd, or customary tenure, or held for any term of yrs of wch not less than [50] yrs shl be unexpired at the time of such pchase, or in the enfranchisemt of any copyhd or customaryhd hds pchased under the psnt power: AND that all such hds shl be assured to the sd trees or tree, their or his hrs, exs, ads, & assns, accdg to the tenure thof & shl be held by them or him (*e*), UPON TRUST that the sd trees or tree shl durg the lives or life of the sd, *husbd* & *wife*, or the survor of them, at their his, or her reqt in writg, & after the dece of such survor, at the discron of the sd trees or tree, sell such hds (*f*), AND UPON FURTHER TRUST that the sd trees or tree shl stand possed of the net moys to arise from every such sale, after paymt of the costs thof, upon the same trusts, & subjt to the same powers & provons, includg the sd power of pchasg hds, as the moy laid out in the pchase of the hds so sold wd have been subjt to if the same had not been so laid out: AND IN THE MEANTIME, & until all the sd pchased hds shl be sold, the sd trees or tree shl pay & apply the rents & profits thof to the pson or psons, for the pposes, & in the mner to whom & for & in wch the income of the trust premes applied in the pchase of the sd hds wd have been applicable if such pchase had not been made: AND IT IS HBY AGRD THAT IN THE MEANTIME & until all the sd pchased hds shl be sold, the sd trees or tree shl have power to manage or superintend the managemt of the same premes with all the powers in that behalf of absolute owners (*g*). *Power to delegate powers*, p. 497: AND to demise all or any pt of the same premes, &c., *leasg powers*, *see* pp. 498, 499, *forms* LXVIII.,

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(*d*) If necessary, say, "the husbd's fortune & the wife's fortune, or any pt or pts thof resply."

(*e*) Where this power is contained in a settlement of land by trust for sale and declaration of trust of the proceeds effected by one deed, substitute at this point for the rest of the clause as follows:—"UPON THE TRUSTS & subjt to the powers & provons hinbfe decld & contd concerng the hds hby assured, or such of the sd trusts, powers, & provons as shl be subsistg or capable of takg effect." Variation for settlement by one deed.

(*f*) See p. 494, note (*b*).

(*g*) For the full form see p. 496.

Indemnity of trustees.

LXIX., *mutatis mutandis* (*a*) : PROVD ALWAYS that, in the event of any hds subjt to rents, covts, or condons being pchased under the trust or power hinbfe contd, the sd trees or tree shl be entled to be indemnified to the fullest extent out of the trust este for the time being subjt to the trusts of these psnts, & the rents & income thof, in respt of any liability incurred by them or him to the paymt of such rents & the pformce of such covts & condons, or under any covts entd into by the sd trees or tree on the pchase of the same premes or orwise in relon thto.

Power to purchase a house. Short form. Variations for furnishing.

LXXVII. PROVD ALWAYS, & it is hby agrd, that the sd trees or tree shl at any time at the reqt in writg of the sd, *husbd*, & *wife*, or the survor of them, lay out any sum not exceedg £——, arisg from the sale (wch the sd trees or tree are hby authorised to effect) of any pt of the sd trust premes, in the pchase (*b*) of a messe with suitable outbldgs & offices & other appurts, & with or witht gardens, pleasure grounds & lands to be held thwith, as a residce for the sd, *husbd*, & *wife*, or the survor of them, such messe & premes to be situate in England or Wales, & to be eir freehd, or copyhd, or leasehd held for a term of wch not less than [50] yrs shl be unexpired at the time of pchase, & to be assured to the sd trees or tree, their or his hrs, exs, ads, & assns, as the case may require, UPON TRUST, durg, &c., *trust for sale & trusts of proceeds as in precedg form: substitutg*, "messe & premes," *for* "hds": AND the sd trees or tree shl until such sale permit the sd, *husbd*, & *wife*,

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As to powers over land to be purchased.

(*a*) The remarks in p. 498, note, as to the leasing powers, especially with reference to the S. L. Acts, are for the most part applicable to this case. If the purchase of land is in actual contemplation, it may be proper to insert more detailed and special powers of management, leasing, &c., according to the probable requirements of the case, either in full or as to the leasing and other powers by reference to the S. L. Acts; see above forms LXVI. and LXXI.

Variations for furnishing.

(*b*) Add, if desired, "& any further sum so arisg not exceedg £—— in the repairg, decoratg & furnishg." If this addition is made, add at the end of the clause, "AND IT IS HBY ALSO DECLD, that any furniture or moveable chattels pchased by the sd trees or tree under the power hinbfe contd, shl be held by them or him upon trust, &c., *as in Prec.* XII., *p.* 554, *includg the trees indemnity clauses;* see notes to Precedents XII. and XIII., pp. 552 and 555. Another plan is to empower the trustees to lend the money to the husband for furnishing, &c., on his bond, without being responsible for its due application, or for enforcing repayment.

or the survor of them, to occupy such messe & premes, but with power to the sd, *husbd* & *wife*, & the survor of them durg their, his, & her lives & life, & aftwds for the sd trees or tree, to demise the same or any pt thof for any term not exceedg twenty-one yrs, to take effect in posson or within six calr months from the date of the lease at rack-rent, the rent reced under any such lease to be pd or applied in the same mner as the income arisg from the proceeds of the sale of the sd messe & premes would be payable or applicable if the same were sold. *Proviso for indemnity of trees as in last form.*

Agreement for settlement of wife's other and after-acquired property (*c*).

LXXVIII. AND IT IS HBY AGRD & DECLD that if the sd, *wife*, shl at the time of the sd intd marre be, or at any time durg the sd intd coverture, she or the sd *husbd* in her rt shl become seised, possed, or entled, of or to (*d*) any real or psonal ppty (other than the ppty hby specifically settled), for any

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As to agreements for settlement of wife's after-acquired property.

(*c*) As to the various points arising under agreements for the settlement of the wife's other and after-acquired property, see 3 Dav. Prec., pp. 194 *et seq.;* Vaizey on Settlements, pp. 230 *et seq.;* Elph. N. & C. Interp. Deeds, pp. 500 *et seq.* The clause in the text is framed so as to avoid as far as may be the questions which have arisen in the reported cases. The following are the points which seem principally to require notice :—

Range of covenant.

1. The enforceability of a covenant by a man to settle his whole future property, if expressed in general terms (apart altogether from any question as to creditors) is very doubtful; but as to property coming under any mode of acquisition specially referred to, it would be divisible, and would clearly be enforced : *Re Turcan*, 40 Ch. D. 5 ; *Re Clarke*, 36 Ch. D. 348 ; *Official Receiver* v. *Tailby*, 13 App. Cas. 523. No case of this kind has arisen (as is believed) on covenants for the settlement of a wife's future property ; and the cases (though the reasoning in them might seem to apply) cannot, it is conceived, be regarded as throwing doubt on the effectiveness of such covenants, which would be a serious matter, as they are very commonly expressed in sweeping general terms. The covenant should not extend to property acquired by purchase, which might catch investments of the wife's savings, and would be generally contrary to the intention ; but see *Finlay* v. *Darling*, (1897) 1 Ch. 719.

Effect of covenant as against husband.

2. It appears safer, having regard to the decisions on s. 19 of the M. W. P. A., 1882 (*ante*, p. 449), to frame this agreement so as to bind any interest that the husband may take on the wife's property falling within the covenant. For this reason the words "& it is hby agrd, &c.," and, "or the sd, *husbd*, in her rt," should still be inserted. The husband will be liable in damages under ss. 14 and 15 of the Act, in respect of the wife's covenant, as her ante-nuptial

Powers of appointment.

(*d*) If it is desired to include property over which the wife may have an absolute power of appointment (which would otherwise not be included, see Vaizey, p. 249), insert here, " or empowered benefly to appt or dispose of (orwise than by will)."

este or intt whatsr in posson, revon, remr, contingency, or expectancy, except ppty of a less value than £—— vestg in posson bfe or durg the sd intd coverture (*a*) at the same time & from a single source (*b*), & except the accumulons, whether invested or not, of income belongg to the sd *wife* (*c*),

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contract, to the extent of any property acquired by him from or through her. The question as to the liability of the husband in damages for the acts of his wife under his own covenant was raised but not decided in *Re Parkin*, [1892] 3 Ch. 510.

Effect as against wife

3. The wife will be bound as to all property to which she may become entitled for her separate use, which by virtue of the M. W. P. A., 1882, includes in the case of marriages after 1882 all her property existing or future: *Re Lumley*, [1896] 2 Ch. 690. The covenant will also create a liability enforceable against her to the extent of her separate property in the same manner as her other ante-nuptial contracts under ss. 13 and 15 of the same Act. As to the effect of the intended wife being an infant, see the note to Precedent VI., *infra*, p. 536.

As to property belonging to wife for separate use.

4. Property belonging to the wife for her separate use is sometimes excepted from the covenant: but this is a mistake, as the object of the covenant is not merely to exclude the husband, but also to protect the wife against marital influence, and also usually to provide for the children; and if the exception is extended, as it logically should be, to property made separate by the Act, it would practically annul the covenant. It has been held, however, that such an exception will not, unless so expressed, extend to property made separate by the Act: *Re Stonor*, 24 Ch. D. 195; *Re Whitaker*, 34 Ch. D. 227.

Contingent interests.

5. The covenant usually extends, as above, to contingent interests; if this is not desired, in lieu of the words "for any este or intt, &c." substitute "for an absolutely vested & indefeasible este or intt in posson, revon, or remr." As to estates tail, see *Hilbers* v. *Parkinson*, 25 Ch. D. 200.

Duration of covenant.

6. The covenant is usually confined to property accruing to the wife during the coverture; and would unless otherwise expressed be held to be so confined, if the wife survives; but if the husband survives, would be construed as extending to any property coming to him from the wife after her death which would not otherwise be caught by the covenant: *Fisher* v. *Shirley*, 43 Ch. D. 290; *Re Coghlan*, [1894] 3 Ch. 77.

7. As to the effect of the wife's bankruptcy, see p. 467, note.

As to stamp duty.

8. The covenant should not be so worded as to comprise property belonging to the intended wife *at the time of the settlement*, as *ad valorem* duty would then be payable on any property then in existence; but if it is restricted to property belonging to her *at the time of the marriage*, or afterwards accruing, this liability is avoided, as it is not a settlement of a "definite and certain" sum—it differs from a settlement of a sum to which the settlor is contingently entitled, as in *Onslow* v. *Commissioners of Inland Revenue*, [1891] 1 Q. B. 239. An extra 10*s*. duty is in any case payable in respect of the covenant.

(*a*) Property acquired by the woman after a decree for judicial separation is not acquired during the coverture: *Dawes* v. *Creyke*, 30 Ch. D. 500.

(*b*) See *Re Davies* (1897), 2 Ch. 204.

(*c*) *Re Bendy*, [1895] 1 Ch. 109, discussed 39 Sol. J. 326—342; disapproved *Finlay* v. *Darling* (1897), 1 Ch. 719.

& except ppty pchased for value by the sd, *wife*, & except any ppty, as to wch in the instrumt under wch it is acquired by the sd, *wife*, an intention is expressed that it shl be exempt from this psnt covt or from any provon of a like nature (*a*), & except moveable chattels or effects of househd, domestic, or psonal use or ornamt, all of wch excepted ppty it is hby decld shl be & remain the absolute ppty & septe este of the sd, *wife*, & except also (*b*) an anny or other este or intt for the life or any pt of the life of the sd, *wife*, or for any term or period determinable on her death, wch it is hby decld shl belong to the sd, *wife*, for her septe use, & durg the intd coverture witht power of anticipon (*c*), then & as often as the same shl happen all such real & psonal ppty (except as afsd) shl forthwith at the expse of the trust este be assured or transferred by the sd, *wife*, her hrs, exs, or ads, and all other necy pties (if any), to the sd trees or tree (*d*),

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(*a*) *Scholfield* v. *Spooner*, 26 Ch. D. 94. In some cases it may be convenient to insert "& except any ppty wch if bound by the psnt covt would be forfeited." The covenant does not affect a life interest forfeitable on alienation so as to cause a forfeiture, *Re Crawshay*, [1891] 3 Ch. 176.

Variation as to annuities, &c., where wife does not take first life interest.

(*b*) In the exceptional case where the wife does not take the first life interest in her own property, and the trusts of annuities, &c., are to follow the trusts of such property, omit the above exception of annuities, &c., and in lieu thereof insert in the trust for conversion after the words, "as shl not consist of moy," the words, "or of an anny or other este or intt for the life of the sd, *wife*, or for any term or period determinable on her death"; and add after the declaration of trust and before the trustees' indemnity clause, "& upon trust that the sd trees or tree shl pay & apply any such anny or other este or intt for the life of the sd, *wife*, or for any term or period determinable on her death as afsd to the pson or psons for the pposes & in the mner to whom & for & in wch the income of the sd other or future acquired ppty of the sd, *wife*, the trusts whof are lastly hinbfe decld wd for the time being be payable or applicable."

Exception as to powers of appointment.

(*c*) Where the wife appoints under a general power property to herself absolutely, it becomes bound by the covenant, *Ewart* v. *Ewart*, 11 Hare, 276. If it is desired to exclude this, add "& except any ppty wch is or shl be subjt to any absolute power of apptmt vested in the sd, *wife*, solely or jtly with the sd, *husbd*, whether such power shl be exercised or not." See note (*d*), p. 505.

Short form.

(*d*) Where brevity is desired, the following may be substituted for the rest of this form to come in here: "upon trusts as nearly correspondg with upon trust that the sd trees or tree shl, with the consent in writg of the sd, *husbd,* & *wife,* or the survor of them, & after the dece of such survor at the discron of the sd trees or tree, (but as to revy ppty not until it falls into posson, unless it shl appear to the sd trees or tree that an earlier sale wd be benefl), sell, call in, & convert into moy such pt of the sd ppty as shl not consist of moy, AND SHL stand possed of the moys to arise from such sale, callg in, & conversion, & of such pt of the sd ppty as shl consist of moy, & of the investmts of such moys resply, & of the income of the same sevl moys & investmts resply, & of the net income of the sd real & psonal ppty until the sale, conversion, & callg in of the same resply, upon the trusts, & subjt to the powers & provons hinbfe decld & contd concerng moys & investmts formg pt of the wife's fortune, & the income thof resply (*a*): [PROVD ALWAYS that under the

Proviso limiting

the trusts hby decld of the wife's fortune as may be, & so that such real ppty shl be impressed with a trust for conversion into moy, & be settled as psonal este." Add proviso for protection of trustees in full form.

As to multiplying charges.

(*a*) Where any annual or gross sum is payable or raisable out of or chargeable on the wife's property, say, " but not so as to increase the sd anny or sum of £——" *or,* " but not so as to increase or multiply chges or powers of chging." If all the property previously settled is the husband's, and the trusts are in the usual form giving him the first life interest and the ultimate reversion in default of issue, the trust of the wife's after-acquired property may be declared by reference to the husband's fortune, with the following variations :—" Save & except that the sd, *wife,* shl take the first life intt for her septe use witht power of anticipon in the sd trust premes, the trusts of wch are now being decld, with remr to the sd, *husbd,* in case he shl survive her, durg his life, and that in case there shall be no child of the sd intd marre, who, being a son, shl attn the age of twenty-one yrs, or, being a daur, shl attn that age or marry, [with such consent as afsd] then subjt & witht prejudice to the trusts & powers hinbfe decld & contd, or by law vested in the sd trees or tree in favour of the sd, *wife,* & *husbd,* & the issue of the sd intd marre, the same trust premes shl be held IN TRUST, &c.," *continue ultimate trusts of wife's ppty, p.* 481, *form* XLIII.

Variation referring to trusts of husband's property.

Variation providing for wife's marrying again.

The trusts are sometimes varied so as to make provision for the wife marrying again. The following are alternative variations for this purpose to be introduced at this point, but it is more usual to provide for this by a separate clause. See the forms LXXIX. to LXXXI. below. " Save only & except that in liability of husband and wife.

agrmt or provon hinbfe contd for the settlemt of the other & after-acquired ppty of the sd, *wife*, the sd, *husbd*, & *wife*, resply, & his or her hrs, exs, & ads, shl be liable for his, her, or their own acts & defaults only, & not for the acts & defaults of any pson or psons over whom he, she, or they resply may have no control at law or in equity] (*b*): PROVD ALWAYS that the sd trees or tree shl not be acctable or liable in respt of any real or psonal ppty wch may become subjt to the sd agrmt or provon for the settlemt of the other & after-acquired ppty of the sd, *wife*, unless or until the same shl have been actually assured, pd, or transferred to them or him, nor for omittg to take pcdgs to get in the same real or psonal ppty, or any pt thof.

Provision for trustee's indemnity.

Power to survivor of husband and wife

LXXIX. PROVD ALWAYS, & it is hby agrd that (*c*) it shl be lful for the survor of them, the sd, *husbd*, & *wife*, at any time or times after the death of the other of them, & eir in con-

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substiton for the afsd trusts & powers for the benefit of the child, chln, & other issue of the sd intd marre, there shl be correspondg provons for the child, chln, & other issue of the sd, *wife*, by her sd now intd, or any subseqt marre," or, "Save only & except that in the event of the sd, *wife*, survivg the sd, *husbd*, & marryg again, it shl be lful for her by any deed or deeds exted in contemplon of such subseqt marre, or by will or codl, exted after such subseqt marre, to direct that all or any pt of the income of the sd other, or future-acquired ppty of the sd, *wife*, hinbfe agrd to be settled, or of the trust premes representg the same, shl be pd to her after-taken husbd, in case he shl survive her, durg his life, or any less period, & subjt to any restrons or condons she may think fit, & by the same, or any other deed or deeds, will or codl, to appt and declare any trusts concerng any pt or pts not exceedg in value at the time of such apptmt takg effect one [moiety] of the capl of such last-mentd ppty & premes in favour of the child, chln, or issue of such future marre."

(*b*) This proviso may be desirable as a protection to the husband from liability under the M. W. P. A. or otherwise; see p. 505, note (*c*).

(*c*) If so intended add here, "if there shl be not more than —— chln of the sd intd marre, who being sons or a son, shl attn the age of twenty-one yrs, or, being daurs or a daur, shl attn that age or marry."

Variation.

to settle a moiety of his or her property on a future marriage.

Variations where the amount to be settled depends on the number of children of the present marriage or of both marriages (a).

templon of or after any future marre of such survor (b), by any deed or deeds, revocable or irrevocable, or by will or codl, to direct or appt that one moiety (c), or any less pt of the capl & income of the ppty hinbfe settled on the pt of such survor [inclusive, in the case of the sd, *wife*, of any ppty becomg settled by virtue of the agrmt hinbfe contd for the settlemt of her other or future-acquired ppty (d)], shl from & after the dece of the sd survor be withdrawn wholly or partially, as the case may be, from the operon of this psnt settlemt, & be held upon such trusts as shl be decld by such appmt for the benefit of the after-taken husbd or wife of such survor, & the issue, whether chln or more remote, of such survor by any such after-taken husbd or wife, such issue to be born & take vested intts within 21 yrs after the death of such survor [but so that such after-taken husbd or wife shl not take any intt exceedg a life intt, & no child or remoter issue of such future marre shl take an intt vestg earlier than his or her age of 21 yrs or day of marre], & also to appt & direct that the pt so appted as last afsd of the capl of the sd ppty shl eir remain vested in the trees or tree of this psnt settlemt or shl in case & when & so far as circes may admit be transferred to any other psons or pson as trees or tree for the ppose of such future settlemt, & in the latter case to make such provon resptg the apptmt of new trees as may be thought pper (e): PROVD

(a) If the child taking the family estate is excluded from the benefit of the present settlement, as in form XXXIV., the references in this form to children of the present marriage should be modified to meet the particular circumstances.

The possibility of the surviving husband or wife remarrying more than once has to be borne in mind. The power is exercisable only after the death of the husband or wife, so that it would not be available in case of a divorce, and the validity of a power to resettle in that event has been doubted, see 34 Sol. J. p. 40.

Variation.

(b) If the power is to be confined to one of the parties, say, "PROVD, &c., that if the sd —— shl survive the sd —— & marry again, then & in such case it shl be lful for the sd —— at any time or times eir in contemplon of or after any such future marre, &c." The other consequential alterations will be obvious.

(c) If the amount to be settled is to depend on the number of children of the present marriage or of both marriages, substitute for "one moiety," "such pt as is hinafter mentd."

(d) If any other property is settled by reference it should be referred to.

(e) If the amount to be settled depends on the number of children of the present marriage add here :—

ALWAYS & it is hby agrd that the power hinbfe contd of withdrawg pt of the sd ppty from this psnt settlemt & any apptmt

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Variations where amount depends on number of children of intended marriage or both marriages.

"PROVD ALWAYS & it is hby agrd that the pt of the capl & income of the sd ppty wch may be withdrawn from this psnt settlmt & appted under the power lastly hinbfe contd shl not exceed the proportion thof [the value] hinafter mentd, that is to say, if there shl be *three* or more chln of the now intd marre, who, being sons or a son, shl attn the age of 21 yrs, or being daurs or a daur shl attn that age or marry, one eql *fourth* pt thof [the sum of £——], & if there shl be only *two* such chln one eql *third* pt thof [the sum of £——] & if there shl be only *one* such child, a *moiety* thof [the sum of £——]." If the amount to be settled is to depend on the number of children of both marriages, insert in addition to or in lieu of the last clause according to the intention, "PROVD ALSO & it is hby agrd that the pt of the capl & income of the sd ppty wch may be withdrawn from this psnt settlemt & appted as afsd shl not bear a greater proportion to the residue of the same capl & income than the no. of chln of any such subseqt marre or marres as afsd who being a son or sons shl attn the age of 21 yrs, or being a daur or daurs shl attn that age or marry, shl bear to the no. of chln of the now intd marre, who being a son or sons shl attn the age of 21 yrs, or being a daur or daurs shl attn that age or marry." In either of the above cases, add, "PROVD ALSO & it is hby agrd that any such apptmt as afsd may be made while it shl be uncertn whether [or to what extent] the same will be capable of taking effect." [If the amount to be settled depends on the number of children of the intended marriage, add, "PROVD ALSO & it is hby agrd that in case at the time of any such apptmt as afsd it shl be uncertn how many chln of the sd intd marre will attn the age of 21 yrs, or being daurs marry as afsd, the amt of income apptable to an after-taken husbd or wife as afsd shl be regulated accordg to the no. of chln of the sd intend marre who shl for the time being & from time to time be living or shl have died after attaing vested intts as afsd & on the assumption that all the chln for the time being living attn vested intts."] [If the amount depends on the number of children of both marriages, substitute for the last clause, "PROVD ALSO & it is hby agrd that the amt of income apptable to an after-taken husbd or wife as afsd shl be regulated accdg to the no. of chln of the sd now intd marre & any such future marre or marres as afsd who shl for the time being and from time to time be in made in psuance thof shl not prejudice the power of advancemt hinbfe contd in favour of any child of the sd now intd marre, wch may be exercised witht regard to the possibility of the share of such child becomg ultimately diminished by reason of any apptmt made or to be made under such power of withdrawal: PROVD ALSO that subjt & witht prejudice to any such apptmt or apptmts wch may be made as afsd, the ppty of wch any such apptmt or apptmts shl be made shl remain & be held upon such of the trusts, & subjt to such of the powers & provons hinbfe decld & contd of & concerng the same as shl be subsistg & capable of taking effect (*a*): PROVD ALWAYS, & it is hby agrd, that in case the survor of them the sd, *husbd* & *wife*, shl marry more than once after the death of the other of them, & in case by the effect of any apptmts made by such survor under the power hinbfe contd for enablg him or her to make apptmts in favour of a future husbd or wife, & the issue of a future marre, more than one moiety (*b*) of the capl or income of the ppty hby settled on the pt of such survor [inclusive in the case of the sd, *wife*, of any ppty becomg settled by virtue of the agrmt hinbfe contd for the settlemt of her other or after-acquired ppty (*c*)], wd but for this psnt provo become vested in or payable to any pson or psons other than the issue of the sd intd marre, the apptmts so made shl be void to the extent of such excess, & shl as betn themselves have priority accdg to their respive dates.

General power to wife to withdraw part of funds from settlement, if no child or only one (*d*).

LXXX. PROVD ALWAYS, & it is hby agrd, that in case the sd, *wife*, shl survive the sd, *husbd*, & there shl be not more than *one* child of the sd intd marre who shl attn a vestd intt in the sd trust premes under the trusts hinbfe decld, it shl be lful for the sd, *wife*, at any time after the dece of the sd, *husbd*, but

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existce or shl have died after attng vested intts as afsd & on the assumption that all such chln as shl for the time being be in existce as afsd attn vested intts & that no more chln of any such future marre will be born."]

(*a*) See p. 482, note (*c*), as to the importance of appointing under the powers in the ultimate trusts of the wife's fortune in the settlement made on her first marriage.

(*b*) *Or*, "such proportion as afsd."

(*c*) See note (*d*), p. 510.

(*d*) This may be varied according to the number of children of the intended marriage, as in the notes to form LXXIX., p. 511.

subjt & witht prejudice to any irrevocable apptmt made under the power [eir of the powers] hinbfe contd of makg apptmts in favour of the issue of the sd intd marre, by any deed or deeds, revocable or irrevocable, or by will or codl exply referrg to this power or the ppty subjt thto (*e*), to appt any pt of the wife's fortune [inclusive of any ppty becomg settled by virtue of the agrmt hinbfe contd for the settlemt of her other & future-acquired ppty], not exceedg one *moiety* thof, to be transferred to any pson or psons whomsr, & in such mner, & in trust for such pson or psons, & for such pposes in all respts as the sd, *wife*, shl think fit: *Add the two last provos but one at the end of form* LXXIX.

Power to a woman to appoint life interest to surviving husband (*f*).

LXXXI. PROVD ALWAYS, & it is hby agrd that notwg anythg hinbfe contd, it shl be lful for the sd, *wife*, [by any deed exted prior to, & in contemplon of any marre, or] by will or codl, to appt unto or for the benefit of any husbd who may survive her (*g*), an intt for the life of such husbd, or any less intt in the wife's fortune [inclusive of any ppty becomg settled by virtue of the agrmt hinbfe contd for the settlemt of her other & future-acquired ppty], or in any pt thof, to commce from the dece of the sd, *wife*, to be subjt to such condons & restrons as she may think fit, and that in the event of any such apptmt being made, the intt wch shl be so appted unto or for the benefit of such survivg husbd, shl take effect in precedce of & priority over the trusts & provons hinbfe decld & contd of & concerng the sd trust premes after the dece of the sd, *wife*, & so that the power of advcemt hrin contd in favour of the chln [or issue] of the sd intd marre shl not be exercised after such apptmt shl have been made so as to affect the intt of such husbd witht his consent in writg.

Power to trustees to relinquish preferential right to take stock in favour of tenant for life (*h*).

LXXXII. PROVD ALWAYS, & it is hby agrd, that in case any preferential rt to take or subscribe for any new or other shares or stk in any rly or other Co shl be offered to the sd trees or tree, as holdg any shares or stk in such Co for the time being subjt to the trusts of these psnts, it shl be lful for the sd trees

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(*e*) See *ante*, Vol. I. p. 93, note; p. 634, note.

(*f*) See clause LXXIX., p. 509.

(*g*) As to the effect of divorce after exercising such a power as this, see *Bullmore* v. *Wynter*, 22 Ch. D. 619; *Re Morrieson*, 40 Ch. D. 30.

(*h*) This is often a useful power.

or tree, in their or his discron, to renounce or to relinquish the benefit of such preferential rt eir absolutely, or in favour of the pson for the time being entled to the income of the sd shares or stk, to the intent that such pson may have the benefit thof, or orwise to subscribe for such new or other shares or stk, or any pt thof, & to dispose of or transfer the same, or the title thto, & every prem or profit arisg thfrom shl be held & applied by the sd trees or tree as if the same were income arisg from the sd shares or stk.

Provision for raising costs of settlement, &c. (*a*).

LXXXIII. PROVD ALWAYS, & it is hby agrd that the sd trees or tree shl with all convenient speed raise by the sale of a sufft pt of the sd ——, & pay [the costs of the marre outfit of the sd, *wife*, & the expses connected thwith, &] the costs & expses of the negotion, preparon, & exon by all pties of these psnts [& of the indre of even date hwith, & the deed poll, bearg date the day bfe the date hrof, hinbfe resply recited or refd to].

Clause putting infant wife to her election to confirm settlement (*b*).

LXXXIV. PROVD ALWAYS, & it is hby agrd [& the sd, *husbd*, doth hby covt with the sd, *trees*] that the sd, *wife*, shl, upon attaing the age of twenty-one yrs, or at any time thrafter upon the reqt in writg of the sd trees or tree, or any pson inttd in the sd trust premes, exte & do, at the expse of the trust este, all such deeds, instrumts, acts, & things as may be necy or pper for effectually confirmg the settlemt intd to be hby made, & vestg in or transferrg to the sd trees or tree the sd —— & premes intd to be hby settled, & all other ppty intd to be hby settled by the sd, *wife*, wch wd be bound by the agrmts & provons hinbfe contd, if the sd, *wife*, had now attned the age of twenty-one yrs, to the satisfon of the sd trees or tree, whose decision as to whether or not this condon has been effectually complied

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Costs of settlement.

(*a*) Unless otherwise arranged, the costs of the settlement are according to usage payable by the husband, whether the wife is of age or an infant (see *Helps* v. *Clayton*, 17 C. B. N. S. 553). It has been doubted whether the husband's liability may not be altered by the provisions of the M. W. P. A., 1882, s. 14, as to his liability for the wife's antenuptial debts, see *De Stacpoole* v. *De Stacpoole*, 37 Ch. D. 139 ; as to the wife's liability, see s. 13. If any question is likely to arise, or it is desired to relieve the husband, the insertion of the above clause may be expedient. As to the right of the solicitor to a lien for the costs, see *Re Lawrance*, [1894] 1 Ch. 556.

(*b*) See note to Precedent VI., p. 536. This clause must of course be adapted to the provisions of the particular settlement. See also a form of covenant by the husband that the wife shall make or confirm a settlement on attaining twenty-one, p. 540, note.

with shl be conclusive, & in the event of the refusal or neglect of the sd, *wife*, so to do upon such reqt as afsd, she shl thenceforth be deprived of all benefit hrunder, & the income & capl of the sd trust premes hby settled or agrd to be settled by the sd, *husbd*, [& *father of husbd or wife, or as the case may be*] shl be held upon the trusts & for the pposes upon & for wch the same wd for the time being be held if the sd, *wife*, were then dead [witht havg exercised any genl power of apptmt over any of the trust premes hby settled or agrd to be settled as last afsd hinbfe given to her the sd, *wife*].

Power for trustees to settle questions, &c.

LXXXV. PROVD ALWAYS, & it is hby agrd that it shl be lful for the sd trees or tree to determine whether any moy shl for the pposes of these psnts be considered as capl or income, & out of what pt of the sd trust premes, & whether out of income or capl, any expses, outgoings or losses shl or ought to be pd, & also to apportion as they or he shl think fit any funds subjt to different trusts wch may have become blended (*c*); AND TO determine all questions & mres of doubt arisg in the exon of the trusts of these psnts, & that every such determon, whether made upon a question actually raised or implied in the acts or pcdgs of the sd trees or tree shl be conclusive, & bind all psons intted under these psnts: [AND THE SD trees or tree shl have also full power to settle all accts & to compromise, compound, abandon, or refer to arbitron, any actions, pcdgs, disputes, claims, demands, & things relatg to the trust premes, & to accept any secy real or psonal for any debts or any ppty claimed, & to exte & enter into reles, agrmts, & other instrumts, & to do all other things pper for any such ppose, witht being responsible for loss occasd thby (*d*)].

To compromise, settle accounts, &c.

Special power to

LXXXVI. PROVD ALWAYS, & it is hby agrd that the sd trees

(*c*) Where two trust funds were inextricably mixed, and a large profit had arisen on investments, the profit was apportioned: *Stoddart* v. *Savile*, 38 Sol. J. 79. See *Edinburgh* (*Provost of*) v. *Lord Advocate*, 4 App. Cas. 823.

Statutory powers of settling accounts, &c.

(*d*) The T. A., 1893, s. 21, gives to two or more trustees acting together, or a sole acting trustee where a sole trustee is authorised to execute the trusts, large powers (unless a contrary intention is expressed or indicated), similar to those in this bracket, which may therefore be omitted. The power in the text may be useful in case of questions as between tenant for life and remainderman as to the right to bonuses or extraordinary profits on shares (as to which see Lewin on Trusts, p. 834, *Re Alsbury*, 45 Ch. D. 237); and as to how expenses or losses should be apportioned, see *Re Hengler*, [1893] 1 Ch. 586; *Re Bennett*, 40 Sol. J. 355.

trustees to settle accounts, &c., as to reversionary interests (*a*).

or tree shl have full powers of settlg & approvg all accts, & executg & doing all reles & things relatg to the trust premes as fully & effectually as if they or he were absolute owners or owner, & so as effectually & completely to dischge & exonerate all acctable pties from all liability in respect of any mres comg within the scope of any such rele: AND THE SD trees or tree may agree or ascertain the share (origl & accrug) & premes hinbfe assned, or any pt or pts thof, at such amt or value as they or he shl think fit, & may accept in or towards satisfon thof at the market or current value, or upon any valuon or estimate of value wch they or he shl think fit, any stks, funds, shares, or secs, whether of the description hinbfe authorised to be taken as investmts or not, & may allow any dedons for duty, expses, or on any other acct whatsr wch may be deemed pper or reasble (whether the allowce thof can be legally required or claimed or not): AND further that the sd trees or tree shl not be under any obligon to require the callg in or re-investmt of any portion of the premes held upon the trusts of the sd settlemt of, &c., or of the sd will of the sd X. resply, wch is not or shl not be in an authorised state of investmt accdg to the trusts applicable thto resply, unless reqted so to do in writg by the sd, *husbd* & *wife*, or the survor of them, & shl not be liable for any loss wch may be incurred by the omission so to do, it being hby dcld that in order to obviate any question in this respt the sd, *husbd* & *wife*, hby exply approve of & adopt the psnt mode of investmt of the sd premes held upon the trusts of the same settlemt & will resply as specified in the sd schedule to these psnts (*b*).

Special power to trustees to

LXXXVII. PROVD ALWAYS, & it is hby agrd that if any hds or share or shares of hds devised by the sd will in trust for sale

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(*a*) This clause would sometimes be useful in a settlement of a reversion; and its provisions are only partially covered by the statutory provisions referred to in the last note.

As to stipulation condoning breaches of trust.

Judicial Trustees Act.

(*b*) A stipulation of this kind for condoning breaches of trust might not be upheld if there were reason for supposing that it was obtained by undue influence: see *Hamilton* v. *Mohun*, 1 P. W. 118. It is sometimes desirable to obtain a formal release of past breaches of trust by a separate deed. As to the jurisdiction of the Court to excuse breaches of trust, see the Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3. *Re Turner* (1897), 1 Ch. 536; *Re Kay* (1897) 2 Ch. 518; *Re Stuart*, *ib.* 583: *Perrins* v. *Bellamy* (1898), 2 Ch. 521; *Re Grindey*, [1898], 2 Ch. 593; *Re Barker*, 46 W. R. 296.

accept land in lieu of money to arise under a trust for sale.

as afsd, of wch the proceeds of sale or any pt thof wd become subjt to the trusts of these psnts, shl be retained by the trees or tree of the sd will unsold, & the trees or tree of these psnts shl think it desirable that the same shl in lieu of being sold be conveyed or assured by the trees or tree of the sd will to & among the psons entled under the sd will, whether by way of parton or in undivided shares, & whether or not chged with any sum for equality of parton or orwise, it shall be lful for the sd trees or tree of these psnts to take & accept such convce or assurce (as regards the share of the sd, *settlor*), in satisfon of the moys to arise under such trust for sale as afsd, wch wd be subjt to the trust of these psnts or any pt thof: And in such case the hds or share of hds wch shall be so conveyed or assured to the sd trees or tree of these psnts shl be held by them or him (*c*) upon trust, with the consent in writg of the sd, *husbd*, & *wife*, or the survor of them, & after the dece of such survor at discron to sell the same, or in case of any undivided share or shares to concur with the owners or owner of, or psons or pson havg power in that behalf over or in relon to any other share or shares in sellg the same, & the sd trees or tree shl, out of the moys arisg from any such sale, pay the costs of such sale or orwise incurred in respt of the premes, & shl hold the residue of such moys & investmts thof, & the rents & profits of such hds or share or shares thof until sale upon the trusts, & subjt to the powers & provons hinbfe decld & contd concerng the moys (arisg under the afsd trust for sale) hby settled, & the investmts & income thof resply, or such of the sd trusts, powers, & provons as shl be subsistg or capable of takg effect. *Powers to trees of managemt, leasg, &c., until sale*, pp. 496 *to* 502, *mutatis mutandis.*

Trustees' receipt clause (*d*).

LXXXVIII. PROVD ALWAYS, & it is hby agrd that the rect of the sd trees or tree for the pchase-moys of any ppty hby

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(*c*) If land is settled in trust for sale by the same deed, the form may proceed as follows, "upon the trusts & subjt to the powers & provons hinbfe decld & contd concerng the hds hby assured or such of the sd trusts, powers, & provons as shl be subsistg or capable of taking effect."

Variation where land settled in trust for sale.

(*d*) The Receipt Clause, the Power to Appoint New Trustees, and the Trustees' Indemnity and Reimbursement Clauses may be and almost invariably are omitted in reliance on the statutory provisions; see as to the Receipt clause

As to the trustee clauses.

directed or authorised to be sold, or for any other moys, stks, funds, shares, secs, or investmts, pd, delivered, or transferred to them or him by virtue of these psnts, or in the exon of the trusts or powers hrof, shl effectually dischge the pson or psons paying, deliverg, or transferrg the same thfrom, & from being bound to see to the applicon, or being answerable for the loss or misapplicon throf.

Power to appoint new trustees (*a*).

LXXXIX. PROVD ALWAYS, & it is hby agrd that if, & so often as, the sd trees hby constituted, or any of them, or any tree or trees appted under this psnt power, or by any ct, shl die or remain out of the United Kingdom for more than twelve calr months, or desire to be dischged from, or refuse or become unfit or incapable to act in the trusts of these psnts, it shl be lful for the sd, *husbd*, & *wife*, or the survor of them, & after the death of such survor for the survivg or continug trees or tree for the time being (& for this ppose any retirg or refusg tree shl, if willg to act in the exercise of this power, be considered a continug tree), or for the psonal repves or repve of the last survivg or continug tree, to appt a new tree or trees in the place of the tree or trees so dying or remaing out of the United Kingdom or desirg to be dischgd, or refusg or becomg unfit or incapable to act as afsd: And upon every such apptmt the no. of trees may be increased or diminished, but not to less than two, & upon every such appmt the trust ppty shl, as soon as circes will admit, be transferred to or vested in the trees or tree for the time being, but every new tree may, as well bfe as after the trust ppty shl have been so transferred, or vested, exte all the trusts & powers of these psnts in the same mner as if he had been hby constituted a tree.

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the T. A., 1893 (56 & 57 Vict. c. 53), s. 20, making the receipt of any trustees or trustee a sufficient discharge for any money, securities (including stocks, funds, and shares, see s. 50), or other personal property or effects payable, transferable or deliverable to them or him under any trust or power. As to the power to appoint new trustees, the retirement of trustees, and the vesting of trust property in trustees, see the T. A., 1893, ss. 10, 11, 12; the last of which sects. applies only to deeds executed after the 31st of December, 1881. And as to the Indemnity and Reimbursement Clauses, see the T. A., 1893, s. 24. See further, Ellis on the Trustee Act, 1893. But a short clause or clauses modifying or supplementing the statutory provisions will generally be required, see pp. 519, 521, forms XC. and XCV. It may occasionally be proper to insert the full clauses when the trust property is situate abroad, where there may be no enactments corresponding to those above referred to.

(*a*) See last note, and next page, note (*b*).

Clause supplemental to the statutory power of appointing new trustees (*b*).

XC. AND IT IS HBY AGRD & DECLD that the power of apptg new trees of these psnts shl be vested in the sd, *husbd*, & *wife*, durg their jt lives, & the survor of them durg his or her life (*c*).

Statutory power of appointing new trustees.

(*b*) The power in the T. A., 1893, s. 10 (1), provides for the case of a trustee dying, remaining out of the kingdom for twelve months, desiring to be discharged, refusing or becoming unfit or incapable; and the power is given to the person or persons nominated for the purpose by the instrument creating the trust, or if there is no such person, or no such person able and willing to act, then to the surviving or continuing trustees or trustee or the personal representatives of the last surviving or continuing trustee (which includes a refusing or retiring trustee if willing to act, sub-s. 4). Power is given by sub-s. (2) (a) and (c) to increase or reduce the number, but not in general to less than two. The Act also by s. 11 enables a trustee, where there are more than two trustees, with the consent of his co-trustees and such other person, if any, as is empowered to appoint trustees, to be discharged without any new trustee being appointed in his place; and by s. 12, enables the trust estate (with certain exceptions) to be vested on an appointment of new trustees by the declaration of the appointor without a conveyance. The Act also, by s. 10, sub-s. 2 (b), gives power, on an appointment of new trustees, to appoint separate sets of trustees for different parts of the property held on distinct trusts; a useful power under wills, but not often required under settlements. As to various points arising under these enactments, see Vol. I., APPOINTMENTS OF NEW TRUSTEES. As to the power of the Court to appoint a judicial trustee, see the Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 1; a beneficiary is not entitled as of right to the appointment of a trustee under the Act: *Re Ratcliff*, [1898] 2 Ch. 352.

Judicial Trustees Act.

Variations.

(*c*) This is the usual power in personalty settlements, but it is sometimes vested in "the pson or psons in whom the sd power is vested by the statute in that behalf with the consent of the sd, *husbd*, & *wife*, durg their jt lives & of the survor of them durg his or her life, & after the dece of such survor at their or his discron," or in "the sd A. durg his life & after his death in the pson, if of full age, for the time being entled to the income of the sd trust premes hby settled, & in case there shl be no such pson, then in the pson or psons in whom the sd power is vested by the statute in that behalf."

The following is occasionally added:—"PROVD ALWAYS & it is the express intention of the pties hto that whenever a vacancy shl happen in the no. of the trees of these psnts by death or any other means, a new tree or new trees shl be forthwith appted to fill such vacancy so that the no. of the actg trees shl never be less than three." If thought fit, add, "PROVD NEVS that all acts & pcdgs on the pt of the trees or tree for the time being of these psnts, shl be valid & bindg on all pties, notwg that the no. of the actg trees may be less than three." See other forms in WILLS.

The same where each settlor is to supply the place of the trustee nominated by him or her.

XCI. AND IT IS HBY AGRD & decld that the power of apptg a new tree or trees in the place of the sd M., or of any tree or trees succeedg to his place, shl be vested in the sd A. durg his life, & after his dece in the sd B. if survivg durg her life, & that the power of apptg a new tree or trees in the place of the sd N., or of any tree or trees succeedg to his place, shl be vested in the sd B. durg her life, & after her dece in the sd A. if survivg durg his life.

Power to appoint additional trustee.

XCII. AND IT IS HBY AGRD & decld that the pson or psons for the time being entld to appt a new tree or new trees of these psnts may from time to time (notwg that no case for apptg a new tree may exist) appt any pson or psons to be a tree or trees of these psnts jtly with the continug trees.

Power to any trustee to retire from trusteeship (*a*).

XCIII. PROVD ALWAYS, & it is hby agrd & decld that if any tree shl at any time be desirous of withdrawg & being dischged from the trusts of these psnts it shl be lful for him so to do by writg under his hand given to the sd, *husbd*, & *wife*, or to the survor of them, & after the death of both of them to the other trees or tree for the time being, & such notice shl operate as an effectual relinquishmt of the trust, & the tree givg the same shl thrupon cease to be a tree to all intents & pposes except as to the acts & deeds necy for the pper vestg of the trust este, funds & premes in the continug trees or tree, or orwise as the case may require, wch shl be exted & done at the expse of the trust este.

Trustees' ndemnity and reimbursement clauses (*b*).

XCIV. PROVD ALWAYS, & it is hby agrd that the trees for the time being of these psnts shl be resply chgeable only for such moys & secs as they shl resply actually rece, notwg their resply signg any rect for the sake of conformity, & shl resply be answerable & responsible only for their own respive acts, rects, omissions, neglects, & defaults, & not for those of each other, nor for any banker, broker, auctioneer, or other pson with whom or into whose hands any trust moys or secs shl be deposited or come, nor for [pchasg or] lendg on the secy of hds with less than a marketable title (*c*), nor for the insufficiency in title or

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As to right of trustee to retire.

(*a*) This clause enabling a trustee to retire as of right at the expense of the trust estate, without the appointment of a new trustee, and without the consents required by the T. A., 1893, s. 11, is, of course, very unusual; see Lewin on Trusts, p. 765.

(*b*) See above, p. 517, note (*d*).

(*c*) Trustees are now empowered to dispense with production of the lessor's deficiency in value of any investmts, nor for any other loss, unless the same shl happen through their own wilful default resply: And also that the sd trees or tree for the time being may reimburse themselves or himself, or pay & dischge out of the trust premes all expses incurred in or about the exon of the trusts or powers of these psnts [or of the sd indre of even date hwith].

XCV. AND IT IS HBY FURTHER AGRD that in addon to the ordinary indemnity given by law to trees, the sd trees or tree may (*c*) [pchase or] lend on the secy of any hds with less than a marketable title, witht being liable for any loss occasd thby.

Clause supplemental to statutory provisions as to indemnity of trustees (*b*).

XCVI. PROVD ALWAYS, & it is hby agrd & decld that the sd trees or tree [of these psnts & of the sd indre of even date hwith] shl not be bound in any case to act psonally, but shl be at full liberty to employ a solor or any other agent to transact all or any business of whatsr nature required to be done in the premes (includg the rect & paymt of moy) & shl be entled to be allowed & pd all chges & expses so incurred, & shl not be responsible for the default of any such solor or agent or any loss occasd by his employmt; & further that [the sd X. or] any tree for the time being [under these psnts or the sd indre

Power to trustees to employ agents and to charge for professional business (*d*).

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title on the purchase of leaseholds (V. and P. A., 1874, s. 2), or an underlease (C. A., 1881, s. 3 (1)); or on lending on the security of leaseholds (T. A. 1893, s. 8 (2)); and by the T. A., 1893, s. 8 (3), they may also (either on a purchase or loan) accept a shorter title than might have been required under an open contract if in the opinion of the court it might with prudence be done. The clause in the text supplements these powers.

(*d*) The first part of this clause is now commonly inserted to obviate the hardship and inconvenience caused by the decisions in *Harbin* v. *Darby*, 28 Beav. 325, and *Re Chapple*, 27 Ch. D. 584, disallowing the costs of the employment of solicitors except for business for which it was strictly necessary; as to the last part of the clause, see 3 Dav. Prec. 792, note.

As to right of trustees to employ agents.

The trustees cannot settle the amount due to one of themselves for business done under this clause so as to bind the beneficiaries, *Re Fish*, [1893] 2 Ch. 413; and express power for this purpose might be added, but it seems of questionable expediency.

The following may be added at the end if desired:—"And further that he may agree with the other trees or tree for the time being to rece & be pd in respt of all or any parlar pt of such business, in lieu of the ordinary professional chges, a salary of such amt & durg such period as may be agrd upon."

Provision for salary.

As to whether the liability of a trustee is increased by his being paid for his services, see *Jobson* v. *Palmer*, [1893] 1 Ch. 71.

of even date hwith] being a solor or other pson engaged in any profession or business shl be entled to chge & be pd all usual professional or other chges for business done by him or his firm in relon to the exon of the trusts of these psnts [or the sd indre of even date hwith] whether in the ordinary course of his profession or business or not, & although not of a nature requirg the employmt of a solor or other professional pson.

Power of revocation of settlement, with variations (*a*).

XCVII. PROVD ALWAYS, & it is hby agrd & decld that it shl be lful for the sd, *settlor*, at any time or times hrafter, [with the consent in writg of the sd trees or tree, wch consent they or he shl have an absolute discron to give or withhold, witht incurrg any responsibility in that behalf,] by any deed or deeds revocable or irrevocable, [or by will or codl exply referrg to this power or the ppty subjt thto] (*b*), wholly or partially to revoke & make void the [uses (*c*)] trusts, powers, & provons hrin decld & contd of & concerng the —— & premes hby settled, & to declare such new or other [uses & (*c*)] trusts of & concerng the same, or any pt or pts thof as he may think fit for the benefit of [himself the sd, *settlor*, his [hrs (*c*)] exs or ads, or any other pson or psons (*d*),] [all or any to the exclusion of the other or others of the follg psons, namely, the psnt or any future wife of the sd, *settlor*, or his chln or more remote issue by his psnt or any future wife, or his collateral relons, but not in favour of himself the sd, *settlor*, or any other pson or psons].

Another form.

XCVIII. PROVD ALWAYS & it is hby agrd & decld that if at the expiron of 20 yrs from the date of these psnts no issue of the intd marre shl be livg, it shl be lful for the sd trees or tree with the consent in writg of the sd A. & B. by any deed or deeds revocable or irrevocable wholly or partially to revoke & make void the trusts hinbfe decld & contd concerng the ppty hby settled or such pt thof as shl not have become vested in some issue of the sd intd marre, & from & after such revocation

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(*a*) See note to Prec. XVII., p. 561.

(*b*) See *ante*, Vol. I., p. 93, note ; *Ib.* p. 634, note.

(*c*) The words bracketed will be appropriate in the case of real estate although settled by means of a trust for sale.

(*d*) This being a general power will, if existing at the death of the settlor, render the settled property liable to estate duty at his death. Finance Act 1894, ss. 2 (1) (*a*), and 22 (2) (*a*).

the sd trees or tree shl stand possed of the wife's fortune or such pt thof as shl not have become so vested in trusts for her septe use & shl stand possed of the husbd's fortune or such pt thof as shl not have become so vested in trust for him absolutely.

XCIX. PROVD ALWAYS, & it is hby agrd that all the trusts, powers, & authorities hinbfe given to or vested in the sd, *trees*, shl devolve upon & be exercisable by the survors & survor of them, & the trees or tree for the time being of these psnts.

Declaration as to powers of trustees (*e*).

PRECEDENTS.

PRELIMINARY NOTE.

As to the validity of marriage settlements against creditors.

As to the protection afforded by the marriage consideration to settlements as against creditors, and that such a settlement is not in general impeachable unless the marriage itself is part of a scheme for defrauding creditors, see 3 Dav. Prec., pp. 688 *et seq.; Kevan* v. *Crawford*, 6 Ch. D. 29. But a settlement, although ante-nuptial, of the settlor's *future* property on his wife and children is liable to be defeated in case of bankruptcy by the 47th section of the Bankruptcy Act, 1883 (see *Ex parte Bolland*, L. R. 17 Eq. 115; *Ex parte Bishop*, L. R. 8 Ch. Ap. 718; and *Re Andrews*, 7 Ch. D. 635, on the similar section of the Act of 1869). As to the liability of married women to the bankruptcy laws, see above, p. 467, note. As to the enforceability, apart from the Bankruptcy Act, of a covenant by a man for the settlement of all his future property, see above, p. 505, note.

As to what may constitute valuable consideration on a post-nuptial settlement, see *Hance* v. *Harding*, 20 Q. B. D. 732; *Mackintosh* v. *Pogose*, [1895] 1 Ch. 505. As to the intended wife having separate advice, independent of her parents, see *Tucker* v. *Bennett*, 38 Ch. D. 1.

As to survivorship of powers of trustees.

(*e*) By the T. A., 1893, s. 22, a power or trust constituted or created after the 31st day of December, 1881, given to or vested in two or more trustees jointly is to survive unless the contrary is expressed (see as to this under the old law, Sug. Pow., p. 128; Lewin on Trusts, p. 726); so that the clause in the text, which was sometimes inserted to prevent doubt, and to avoid repeating the words "and the survivors and survivor of them," all through the deed, can now seldom be required, especially in personalty settlements; but it is retained for use if desired. As to the effect of words continuing the trusts or powers to the representatives or assigns of the last surviving trustee, see *ante*, Vol. I., p. 101, note.

As to limitations in favour of collaterals.

That limitations in favour of collaterals are not primarily within the marriage consideration, although they may be supported by the valuable consideration arising from special contract; see 3 Dav. Prec. 670; Dart, V. & P. 894; *Re Anstis*, 31 Ch. D. 596; *Tucker* v. *Bennett*, *ubi supra;* but the mere recital of an agreement for the settlement in the usual form would not suffice for the purpose, *De Mestre* v. *West*, [1891] A. C. 264; where, however, the limitations in favour of the issue of the intended marriage are so interwoven with or dependent on those in favour of collaterals that the one cannot take effect without the other, the latter will be held to be within the consideration arising out of the mutual contract: *Mackie* v. *Herbertson*, 9 App. Cas. 303, see p. 337; *De Mestre* v. *West*, *ubi supra.* After some conflict of opinion (see *Newstead* v. *Searles*, 1 Atk. 264; *Clayton* v. *Lord Wilton*, 6 M. & S. 67; *Clarke* v. *Wright*, 6 H. & N. 849; *Gale* v. *Gale*, 6 Ch. D. 144; *Re Cameron*, 37 Ch. D. 32), it is now settled that the marriage consideration extends only to the husband and wife and the issue of the intended marriage, and not to the issue of either party by a former or subsequent marriage, nor of course to the previous illegitimate issue of either party: *Mackie* v. *Herbertson*, *ubi supra; De Mestre* v. *West*, *ubi supra.*

Account duty.

If the settled fund ultimately devolves on collaterals, account duty may be payable under 44 Vict. c. 12, s. 38 (2), and 52 Vict. c. 7, s. 11, although there is valuable consideration, *Attorney-General* v. *Jacobs Smith*, [1895] 2 Q. B. 341, unless estate duty under the Finance Act, 1894, is payable.

Abandonment of the marriage.

As to the operation of the settlement being dependent upon the marriage taking place, and the effect of its going off or being invalid, see 3 Dav. Prec., p. 10, note; Elph. Interp. p. 331; *Essery* v. *Cowlard*, 26 Ch. D. 191; *Bond* v. *Walford*, 32 Ch. D. 238. As to the effect of two inconsistent settlements, see *Re Gundry*, [1898] 2 Ch. 505. A clause is sometimes inserted avoiding the settlement if the marriage does not take place within six months.

I.

PREC. I.

SETTLEMENT *on marriage, of* RAILWAY SHARES *belonging to* HUSBAND, *and* CONSOLS *and* BONDS (PASSING *by* DELIVERY) *of a Foreign Government belonging to* WIFE, EACH *taking the* FIRST LIFE INTEREST *in his or her* OWN PROPERTY. AGREEMENT *for* SETTLEMENT *of* WIFE'S AFTER-ACQUIRED PROPERTY. VARIATIONS *where* RECITALS *are* OMITTED (*a*).

Recitals. Marriage.

PARTIES, A., *husbd*, 1; B., *wife*, 2; C., D., & E., *trees*, 3. *Recite intd marre*, p. 450; *Agrmt for settlemt & transfer of*

(*a*) This Precedent may be readily used for the simpler case of a settlement of stocks and shares belonging to one of the parties only.

Variations where recitals are omitted.

The following are the variations where recitals are dispensed with; the witnessing part may commence :—" WITNETH that in psuance of an *the rly shares belongg to A.* (*givg the parlars if convenient in first schdle*), p. 452, *form* IX., *or, if preferred,* p. 450, *form* II., *&* p. 452, *form* XI.; [*Statemt of value for stamp duty,* p. 452]: AND WHAS psuant to a further agrmt made upon the treaty for the sd intd marre, the sum of £—— $2\frac{3}{4}$ p.c. Consold Stk & —— bonds of the —— Governmt (*b*) for £—— sterlg each, *or,* "the annies & bonds, the parlars whof are specified in the second schdle hto," belongg to the sd B., have been resply transferred into the names of & delivered to the sd C., D., & E., to the intent that the same shl be held in trust, *for B. till marre, &c., as at* p. 452, *form* IX. [*or, if preferred, recite agrmt as at* p. 450, *form* II., *& transfer as at* p. 452, *form* XI.]; *Agrmt for settlemt of B.'s after-acquired ppty,* p. 454: NOW THIS INDRE WITNETH that, in psuance of the sd agrmt & in conson of the sd intd marre, it is hby agrd & decld that the sd C., D., & E., shl, after the sd intd marre, stand possed of the sd shares, Consold Stk, & bonds hinbfe recited to [*or,* "when they shl"] have been transferred & delivered resply to them the sd C., D., & E., UPON TRUST that they the sd C., D., & E., &c., *continue trust for investmt, see* pp. 458 *to* 463, *forms* II. *to* VIII.; *Power to vary investmts,* p. 464. AND SHL pay the income of the sd rly shares & the ppty representg the same, hinafter called the husbd's fortune, to the sd A. & his assns durg his life, & after the death of the sd A. shl pay the sd income to the sd B., if survivg, & her assns durg her life, but so that durg the intd

Agreement for settlement.

Transfer of stock, &c.

Witnesseth.

Declaration of trusts.

Investment.

Income.

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agrmt entd into upon the treaty for & in conson of a marre wch is intd shortly to be solemnized betn the sd A. & B. it is hby agrd & decld that the sd C., D. & E. shl stand possed of the ry shares specified in the first schdle hto belongg to the sd A., wch have been transferred by him into the names of the sd C., D. & E., in trust for the sd A. until the sd intd marre, & shl stand possed of the annies & bonds specified in the second schdle hto belongg to the sd B. wch have been resply transferred into the names of or delivered to the sd C., D. & E. in trust for the sd B. until the sd intd marre, & shl stand possed of all the sd shares, annies, & bonds, specified in the first & second schdles hto, after the sd marre upon trust, &c., *for investmt, &c.*" The rest of the deed will be as in the text.

(*b*) As to stamping foreign bonds, &c., see the Stamp Act, 1891, sched. "Marketable security;" and ss. 82, 83, 84, as amended by 56 Vict. c. 7, s. 4.

PREC. I. coverture the same shl be for her septe use witht power of anticipon, And shl pay the income of the sd Consold Stk & bonds, & the ppty representg the same, hinafter called the wife's fortune, to the sd B. durg her life for her septe use witht power of anticipon, & after the death of the sd B. shl pay the sd income to the sd A., if survivg, & his assns durg his life (*a*). Capital. AND AFTER the death of the survor of them, the sd A. & B. shl stand possed of all the sd trust premes & the future income thof, IN TRUST, *for chln or remoter issue of marre as A. & B. or survor appt*, p. 474, *form* XXX., *or* p. 475, *form* XXXI., *in default of apptmt for chln of marre at twenty-one, &c.*, p. 476, *form* XXXIII.; *Hotchpot clause*, p. 477; [*Mtce & accumulon clauses*, pp. 477 & 479, *or short form*, p. 480;] *Advancemt clauses*, p. 480; [*Provon extendg mtce, &c., clauses to appted shares*, p. 480 (*b*);] *Ultimate trust of A.'s & B.'s fortunes*, p. 481; *Agrmt for settlemt of other & after-acquired ppty of wife*, p. 505, *form* LXXVIII. (*c*); *Power to trees to settle questions*, p. 515; *Clauses supplemental to statutory provons as to apptmt & indemnity of trees*, p. 519; *form* XC., & p. 521, *form* XCV. *Power to trees to employ agents, &c.*, p. 521. IN WITS, &c.

[*Two schdles.*]

II.

PREC. II.

SETTLEMENT, *on Marriage, of* POLICY *of* ASSURANCE *effected on* LIFE *of* HUSBAND *in his* OWN NAME. VARIATIONS, *where the* POLICY *is assigned by a* SEPARATE DEED, *and where it is effected in the* NAMES *of the* TRUSTEES, *and for* SEVERAL POLI-

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(*a*) Form XX., p. 468, would be appropriate in this case if it were not for the risk of letting in estate duty on both funds on the death of such of them, A. and B., as shall first die.

(*b*) See p. 474, note (*d*).

(*c*) Add here, if desired, a power to either party to make a settlement on a future marriage, see pp. 509 to 512. This may be especially important in the case of the wife where the settlement comprises all her existing and future property acquired during the coverture.

CIES (*d*). AGREEMENT *for* SETTLEMENT OF WIFE'S AFTER-ACQUIRED PROPERTY.

PARTIES, A., *husbd*, 1; B., *wife*, 2; C., D., & E., *trees*, 3. *Recite intd marre*, p. 450; *Title to & agrmt for settlemt of poly or pols*, p. 453, *form* XIII., *or if the poly has been effected in the names of trees, form* XV., *or, if it is assned by a septe deed, form* XIV.; *Agrmt as to settlemt of wife's other & after-acquired ppty*, p. 454: NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of the sd intd marre, [(*e*) *assnmt by A.*, "**as settlor**," *with approbon of B., of poly or pols to C., D., & E., in trust for A. till the marre, &c.*, p. 455, *form* I., *&* p. 457, *note:* AND] IT IS HBY AGRD & DECLD that, in case the sd intd marre shl take place, the sd C. D., & E., or the survors or survor of them, or other the trees or tree for the time being of these psnts (hinafter called the sd trees or tree) shl, upon the death of the sd A., rece all the moys assured by or to become payable under the sd poly

Recitals.

Witnesseth.

Assignment of policy.

Trusts of policy monies.

(*d*) Having regard to the Stamp Act, 1891, s. 118, which makes an assignment of a life policy of no effect unless duly stamped, it may sometimes be desirable that the assignment should be by a separate deed, or else to get the stamp adjudicated, in order to preclude questions with the office or otherwise as to its sufficiency. As to the stamp duty upon a settlement of life policies, see the Stamp Act, 1891, s. 104. If the assignment is made by a separate deed, the *ad valorem* duty will be on the settlement, the assignment being chargeable only with a 10*s.* stamp, s. 106. If the policy is a new one it is better to effect it in the names of the trustees.

As to assigning policy by separate deed.

Stamp.

Recitals might be dispensed with; see note (*a*), p. 524.

The M. W. P. A., 1882, s. 11 (re-enacting in a modified form a similar provision in the M. W. P. A., 1870, s. 10), enables a man or woman to effect a policy on his or her life for the benefit of his or her wife or husband and children, or any of them as expressed in the policy, so as to operate as a settlement thereof, and makes provision for the appointment of trustees; and in default of any such appointment of a trustee the policy is to vest in the insured, and his or her personal representatives in trust for the purposes expressed; and the receipt of the trustees or the personal representative, as the case may be, is to be a discharge to the office. See as to various points arising on the Act, W. B. & C., p. 263. As to the validity of such policies against the creditors of the husband when a trader, see *Holt* v. *Everall*, 2 Ch. D. 266, decided on the Act of 1870. Settlement policies under the Act do not seem likely to be extensively used, as the saving of expense (although the policy is not chargeable with *ad valorem* stamp duty as a settlement) would not usually be sufficient to compensate for the possible inconveniences attending their use.

As to settlement of policies under the M. W. P. A., 1882.

(*e*) If the policy is effected in the trustees' names, or is assigned by a separate deed, the part in brackets will, of course, be omitted.

PREC. II.

Investment.

[respive pols] of assurce: AND SHL, with the consent in writg of the sd B. durg her lifetime, & after her death at the discron of the sd trees or tree, invest the same in the names or name [or under the legal control] of the sd trees or tree in or upon, &c., *Investmts, see* pp. 459 *to* 463, *forms* II. *to* VIII.; *Power to vary investmts*, p. 464: AND SHL pay the income of the sd poly moys or the investmts representg the same to the sd B. or her assns durg her life, & so that durg the intd coverture the same shl be her septe este, but she shl not have power to dispose of or chge the same by way of anticipon. AND AFTER the death of the sd B. shl stand possed of the sd poly moys, investmts & premes, & the income thof, IN TRUST, *for issue of marre as A. & B. or survor appt*, p. 474, *form* XXX., *or* p. 475, *form* XXXI., *in default of apptmt for chln eqlly at twenty-one, &c.*, p. 476, *form* XXXIII.; *Hotchpot clause*, p. 477, *form* XXXVI.; *Advancemt*, p. 480; *Ultimate trust of*, "the sd trust premes," *for A.*, p. 481; *Covt by A. to keep up poly*, p. 484: [PROVD ALWAYS, & it is hby agrd & decld, that it shl be lful for the sd trees or tree to borrow the amt required for paymt of the annl premiums or other sums necy for keepg on foot or restorg the sd poly [respive pols] or any such substituted poly as afsd, or for effectg any such substituted poly, at intt on the secy of the sd poly or pols, & to apply the amt so borrowed accdly;] *Option of applying bonuses in diminon of premiums*, p. 485; *Power to surrender poly, & trust to accumulate proceeds*, p. 485; *Provo protectg trees in case of lapse of poly*, p. 486; *Agrmt for settlemt of wife's other & after-acquired ppty, the trusts being decld by referce to* "the trust premes," p. 505; *Add second variation in note*, p. 508; *Power to trees to settle questions*, p. 515; *Clauses supplemental to statutory provons as to apptmt & indemnity of trees*, p. 519, *form* XC., & p. 521, *form* XCV.; *Power to trees to employ agents, &c.*, p. 521. IN WITS, &c. (*a*).

Income.

Trusts after death of husband and wife.

Power to trustees to borrow money to keep up policy.

(*a*) Notice of the settlement must be given to the office, if the policy is effected in the husband's name, pursuant to the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144).

III.

ASSIGNMENT *to trustees of Marriage Settlement of even date, of a* POLICY *or* POLICIES *of Assurance on* LIFE *of Husband* (*b*).

PREC. III.

PARTIES, A., *husbd*, 1; B., *wife*, 2; C., D., & E., *trees*, 3; *Recite intd marre*, p. 450; *Title to & agrmt for settlemt of poly or pols*, p. 453, *form* XIII.: NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of the sd intd marre, *assnmt by A.*, "**as settlor**," *with approbon of B., of poly or pols to C., D., & E., habendum in trust for A. till the marre, & aftwds on trusts of settlemt of even date*, p. 455, *form* I.; *Clause as to apptmt of new trees*, p. 519, *form* XC. IN WITS, &c. (*c*).

IV.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *to* TRUSTEES *of Marriage* SETTLEMENT *of even date* (*d*).

PREC. IV.

PARTIES, A., *wife*, 1; B., *husbd*, 2; C., D., & E., *trees*, 3. *Recite mtge to A. & state of mtge debts as at* pp. 5 & 7; *Intd marre*, p. 450: AND WHAS upon the treaty for the sd intd

Recitals.

Agreement for transfer.

(*b*) See p. 527, note (*d*).

(*c*) As to notice to the office, see p. 528, note (*a*).

(*d*) The transfer is made by a separate deed, in order that the settlement may not become part of the title to the mortgaged estate, in a manner similar to that in which land conveyed in trust for sale, or a portion charged on land, is settled (see the next Precedent, and Precedents VIII., IX., XI., *infra*). And with the same object of keeping the settlement off the title to the land, upon new trustees being appointed, separate appointments are made for the settlement and the transfer or conveyance of even date (see Vol. I., APPOINTMENTS OF NEW TRUSTEES, pp. 116, 118). The transfer of mortgage to the trustees in the text differs from a mortgage taken by trustees on an investment made after the settlement, or where a mortgage so taken is afterwards transferred on an appointment of new trustees, as the transfer in the text discloses the existence of the trust; but this is not attended with any practical inconvenience, as the deed is framed so as to prevent the settlement being material to the title. As to keeping the trusts off the title, see *ante*, Vol. I., p. 507. If the settlor has only an equitable interest in a mortgage vested in trustees, a separate deed is unnecessary; see Precedent V. As to the stamp on this deed, see the Stamp Act, 1891, s. 106, Schedule, tit. "Mortgage, Transfer."

As to settlement of mortgage debt.

marre it was agrd that the sd mtge debt of £—— & intt, & the secs for the same, shd be transferred to the sd C., D., & E., in mner & upon the trusts hinafter expd: Witnesseth. NOW THIS INDRE WITNETH that in psuance of the sd agrmt, &c., Assignment of mortgage debt. *assnmt by A.*, "**as settlor** with the approbon of the sd B." (*a*) *to the trees of*, "ALL THAT the sd ppal sum of £—— secd by the hinbfe recited indre as afsd, & the intt now due & henceforth to become due on the same, & the benefit of all secs for the same," *& habendum*, p. 455, *form* I., *with the varion, where the settlemt is effected by a septe deed* (*b*): Further witnesseth. AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & in conson of the sd intd marre, she, the sd A. **as settlor** (*b*), with the approbon of the sd B., doth hby, &c., Conveyance of mortgaged property. *convce of mtged ppty to trees subjt to redmon*, p. 210; *clause as to apptmt of new trees*, p. 519, *form* XC. IN WITS, &c. (*c*).

V.

PREC. V

SETTLEMENT, *on Marriage, of a* MORTGAGE *Debt, belonging to the Wife, and* REVERSIONARY SHARE *under her Parents'* SETTLEMENT *and an* APPOINTMENT (*d*), *and of* POLICIES *on the life of the Husband, effected in the* NAMES *of the* TRUSTEES *of the Settlement. The* WIFE *taking the* FIRST LIFE

(*a*) It seems correct that the settlor should assign the debt, and also convey the mortgaged property "as settlor," so as to imply only the limited statutory covenant for further assurance as to both; unless it is intended that the full covenants for the title should be entered into, in which case the words, "as benefl owner," would be substituted; see p. 455, note.

(*b*) If there is any doubt as to the possibility of immediately giving notice of the assignment a power of attorney should be inserted here, see p. 39, form XXIV.; as to the omission of the power, see p. 39, note.

(*c*) Notice of the transfer should be given to the mortgagor.

(*d*) The appointment is usually made by a separate deed, which is the more convenient practice, and attended with little additional expense. For forms of appointments, see Vol. I., APPOINTMENTS. The enactment in the Bankruptcy Act, 1883, s. 47, invalidating settlements of future-acquired property, does not apply to a settlement of a reversionary share under an existing settlement to which the settlor may become entitled under a future appointment; *Re Andrews*, 7 Ch. D. 635 (on the similar section of the Act of 1869).

INTEREST. *The Husband's* FATHER COVENANTS *to pay an* ANNUITY. *The Wife's* FATHER COVENANTS *to* MAKE UP *her Reversionary* SHARE *to a* CERTAIN SUM. VARIATIONS, *where the Wife's Interest in the* MORTGAGE *is* EQUITABLE *only, and where a* FIXED SUM *raisable out of the* REVERSION *is settled, and where the* HUSBAND *is a* FOREIGNER *or of* SCOTCH *domicile* (*e*).

Recitals.

PARTIES, A., *husbd* (*f*), 1; B., *wife* (*f*), 2; C., *husbd's father*, 3; D., *wife's father*, 4; E., F., & G., *trees*, 5. *Recite intd*

Matrimonial domicile.

(*e*) In the absence of a settlement, the rights and obligations imposed by marriage on a husband and wife are those of the place in which the newly-married couple intend to establish their home; see *Colliss* v. *Hector*, L. R. 19 Eq. 334; Story, Conflict of Laws, ss. 191 to 199; see also the authorities collected, Sirey, Les Codes Annotés, note to Code Napoléon, Art. 1387. These rights are affected by change of domicile so far as they relate to unsettled moveables; *Re De Nicols*, [1898] 1 Ch. 403, 2 Ch. 60. The marriage settlement must be interpreted according to the law of the place where it is contracted (Story, Conflict of Laws, s. 276), or, rather, it is submitted, according to the law with reference to which it is evidently framed (*Este* v. *Smyth*, 18 Beav. 112; *Chamberlain* v. *Napier*, 15 Ch. D. 614; *Re Hernando*, 27 Ch. D. 284; *Bradford* v. *Young*, 29 Ch. D. 617; *Barnard* v. *White*, 56 L. T. (N. S.) 9). Questions as to the conflict of laws are apt to arise where the intended husband is Scotch, see *Re Craignish*, [1892] 3 Ch. 180, which shows the desirability of excluding (if so intended) the Scotch law by an ante-nuptial contract. As to the personal capacity of the parties, see *Cooper* v. *Cooper*, 13 App. Cas. 88 (a Scotch case). A difficulty occurs where the provisions of a marriage settlement though lawful according to the law according to which it has to be interpreted, are unlawful in the place of the matrimonial domicile. As for example, the usual clauses as to children in an English settlement would be illegal according to French law, Code Napoléon, 1389. It appears from *Van Grutten* v. *Digby*, 31 Beav. 561, that if a marriage is contracted in England between an English woman and a foreigner with the intention that the matrimonial domicile shall be foreign on the faith of a settlement in the English form, entered into previously to the marriage, relating to property subject to the law and within the jurisdiction of England, the English Courts will determine the rights of all persons claiming under it, as if the whole matter were to be regulated by English law. It will be safer to appoint as trustees persons domiciled in England, and to prohibit investments in the place where the husband is domiciled, in those cases at least where, according to the law of that place the settlement would be invalid, so as to render it improbable that any question as to the settlement could be brought before the Courts of that place. A marriage solemnized in and valid according to the law of England may where

Operation of settlement on marriage between persons of different domiciles

(*f*) When the intended husband is a foreigner, or Scotch, say, "domiciled in ——."

PREC. V.

Of title to equitable interest in mortgage.

Agreement for settlement.

Agreement as to making up the value of reversionary interest.

Witnesseth.

marre, p. 450; *Title of B. under her father's marre settlemt, & an apptmt to,* "one eql —— pt or share of the trust funds," &c., *subjt to her parents' life intt*, p. 451, *form* IV.; *Parlars of trust ppty*, p. 451, *form* VI.; [*If the mtge is legally vested in B. & is transferred to the trees by a septe deed, recite the title & transfer*, p. 453, *form* XVI.; *If B.'s intt in the mtge is equitable only, substitute*, "AND WHAS the sd B. is, under or by virtue of, &c., beneflly entitled to one eql —— pt or share of or in a ppal sum of £—— & intt secd by a mtge of certn freehd & copyhd hds belongg to ——, situate at, &c., wch ppal sum of £—— & intt, togr with the secs for the same is now legally vested in K. & L.;"] *Agrmt for settlemt*, p. 452, *form* VIII. *of*, "the sd —— pt or share or other pts or shares to wch the sd B. is now or will upon the sd marre become entled of or in the trust funds or ppty comprd in the sd settlemt (*a*), [*If B.'s intt in the mtge is equitable only, add*, "& also the sd ppal sum of £——, to wch the sd B. is entled as afsd, & the intt thron"]: *Title to & agrmt for settlemt of pols on A.'s life*, p. 453, *form* XV.; *Agrmt that C. shd covt for paymt of anny*, p. 454, *form* XVIII.: AND WHAS it has been further agrd that the sd D. shl enter into the covt hinafter contd for makg up the amt of the sd revy share or intt of the sd B. to the sum of £——; *Agrmt as to settlemt of B.'s after-acquired ppty*, p. 454, *form* XIX. (*b*); NOW THIS INDRE WITNETH, *assnmt by*

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one of the parties is a foreigner be invalid in his or her country owing to the law of that country; see Code Napoléon, 174. It is always prudent where one of the parties is a foreigner, to ascertain that the law of his or her country contains no such provisions. See, generally, Vaizey on Settlements, p. 1640.

Variation for fixed sum.

(*a*) If a fixed sum, raisable out of the reversion, is settled, substitute for the above a recital of agreement for settlement of "the sum of £——, to be raised out of the sd pt or share," &c., as in the text, "when the same shl fall into posson." If the balance of the reversion is not to be settled, it will of course be excepted out of the covenant (if any), to settle the wife's other and after-acquired property.

Variation for foreigner.

(*b*) When the intended husband is a foreigner, or Scotch, say, "AND WHAS it is the intention of the pties hto that these psnts shl be construed, & that the rts of all psons claimg hrunder shl be regulated by the law of England in the same mner as if the sd A. were now domiciled in England, & as if both the sd A. & B. were to remain henceforth durg their respive lives domiciled in England."

Assignment.
Trusts.
Investment.
Trusts during lives of husband and wife.
After the death of husband and wife.

B., "**as settlor**," *of,* "ALL THAT," &c., *the revy share under her parents' settlemt & apptmt,* p. 455, *form* I., & p. 456, *note,* (*c*) [*If B.'s intt in the mtge is equitable only, add,* "AND ALSO all that," &c., *the sum secd on mtge,* p. 457, *note*]. AND IT IS HBY AGRD & DECLD that the sd E., F., & G., shl, from & after the sd intd marre, stand possed of the sd pt or share (*d*), [mtge debt & intt] & premes hby assned [*If the mtge is transferred by a septe deed, add,* "& the sd mtge debt of £—— & intt wch have been transferred to the sd trees by the hinbfe recited indre of even date hwith"]: UPON TRUST that they, the sd E., F., & G., or the survors or survor of them or other the trees or tree for the time being of these psnts (hinafter called the sd trees or tree) shl eir allow the sd pt or share as & when the same shl fall into posson & be reced by the sd trees or tree, & the sd mtge debt, or any of them, or any pt or pts thof resply, to remain, &c., *continue investmt clause, see* pp. 459, 463, *forms* II. *to* VIII.; *Power to vary investmts,* p. 464: AND SHL durg the life of the sd B. pay the income of the sd respive trust premes & the ppty representg the same resply, hinafter called the wife's fortune (includg any intt now accrued but not yet reced, on the sd mtge debt of £——) *to B. witht anticipon,* p. 466, *form* XV., *remr to A. for life,* p. 467, *form* XVII.: AND AFTER the death of the survor of them the sd A. & B. shl stand possed of the wife's fortune, & the income thof, &c., *trusts for issue of marre,* p. 474, *form* XXX. (*e*), *or*

Variation for fixed sum.

(*c*) If a fixed sum, raisable out of the reversion, is settled, substitute an assignment of "the sum of £——, to be raised out of the sd pt or share, &c., as soon as may be after the same pt or share & premes shl fall into posson, & to be pd to the sd, *trees,* their exs, ads, or assns, witht any dedon in respt of succession [legacy] or other duty, expses, or orwise, with intt thron, at the rate of —— p.c. p.a., from the day when the sd pt or share & premes shl fall into posson until the same sum of £—— shl be raised & pd."

(*d*) In the case mentioned in the last note, say, "the sd sum of £—— & intt:" the alterations in the rest of the Precedent for this case will be obvious.

Variation for foreigner.

(*e*) Where the intended husband is a foreigner, or Scotch, say, in the power of appointment, "by will or codl, exted in such mner as to be valid accdg to the law of the domicile of such survor or by

Trusts of policies.

Covenants.

p. 474, *form* XXXI., & p. 476, *form* XXXIII., *hotchpot* [*mtce accumulon*] *& advancemt clauses*, pp. 477 *to* 480. *Ultimate trust of wife's fortune*, p. 481 (*a*); *Power to trees to pay income to wife's bankers*, p. 473, *form* XXIX.; *Trusts of pols by referce to the trusts decld of*, " the wife's fortune," *with ultimate trust for A.*, p. 483, *form* XLV.; *Insert such of the clauses* XLVI. *to* LI. *relative to the pols as may be appropriate. Covt by C. to pay anny to the trees & declon of trust*, pp. 491, 492 (*b*); *Covt by D. to make up B.'s revy intt to a certn sum & declon of trust*, p. 488; *Agrmt to settle B.'s other & after-acquired ppty*, p. 505; *Power to trees to settle questions, &c.*, p. 515; [*Special power to trees to settle accts as to revy share settled by B.*, p. 515; *Special power to accept land in lieu of moys arisg under trust for sale*, p. 516, *if appropriate*]: *Clauses supplemental to statutory provons as to apptmt & indemnity of trees*, p. 519, *form* XC., & p. 521, *form* XCV. (*c*); *Power to trees to employ agents*, p. 521. IN WITS, &c. (*d*).

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any writg, purportg to be a will or codl, exted in such mner that the same wd be valid as such accdg to the law of England if such survor were, at the time of his or her death, domiciled in England, & so that in the case of the sd B. such will, codl, or writing shl be valid whether she shl be covert or sole." See Story, Conflict of Laws, ch. xi., s. 473.

(*a*) Where the intended husband is a foreigner, or Scotch, the power of appointment by will should be in the form given in the last note. *mutatis mutandis.* In the absence of this provision, a will made in pursuance of a power executed so as to be valid according to English law though invalid according to the law of the testatrix's domicile, is (*Re Huber*, [1896] P. 209), while if executed so as to be valid according to the law of the domicile and invalid according to English law it is not (*Hummel* v. *Hummel*, [1898] 1 Ch. 642) effectual.

Variation as to annuity.

(*b*) Add, if so intended, " but so that if the sd B. shl marry again after the death of the sd A., the same annl sum shl be pd & applied to the psons, for the pposes, & in the mner to, for, & in wch the same wd be payable or applicable if the sd B. were dead."

Variation for foreigner.

(*c*) Where the intended husband is a foreigner, or Scotch, add, " AND IT IS HBY AGRD & DECLD by all the pties hto, & parlarly by the sd A., that these psnts shl be construed, & that the rts of all psons claimg hrunder shl be regulated, accdg to the law of England, in the same mner as if the sd A. were now domiciled in

(*d*) For this note, see next page.

VI.

PREC. VI.

SETTLEMENT, *on Marriage of* INFANT, *of* SHARES *in* SETTLED FUNDS, *to which the* WIFE, *the* INFANT, *is entitled partly in* POSSESSION *and partly in* CONTINGENCY, *and of a sum of* CONSOLS *in* COURT, *to which the* HUSBAND *is* CONTINGENTLY *entitled in* REVERSION. COVENANT *by the Husband for* PAYMENT *of an* ANNUITY CHARGED *on the net* PROFITS *of his* BUSINESS. *Each takes the* FIRST LIFE INTEREST *in his or her* OWN PROPERTY, *the* HUSBAND'S LIFE INTEREST *in his* OWN PROPERTY *being* CHARGED *with* MAINTENANCE *for his Wife and Children, And his* LIFE INTEREST *in the* WIFE'S PROPERTY *being made* DETERMINABLE *on* BANKRUPTCY, *&c.* (*e*). POWER *to invest in* PURCHASE *of* LAND. POWER *to either party to make a* SETTLEMENT *on a* FUTURE MARRIAGE. POWER *to trustees to obtain a* STOP ORDER. VARIATIONS *where the* HUSBAND'S LIFE INTEREST *in the* WIFE'S PROPERTY *is* DETERMINABLE *but not* PROTECTED, *and where he takes the* FIRST LIFE INTEREST *in* HER *property. The* WIFE

England, & as if the sd A. & B. were to remain henceforth durg their respive lives domiciled in England."

Notice.

(*d*) Notice of the settlement must be given to the trustees of the marriage settlement of the wife's parents; and if the wife's interest in the mortgage is equitable only, to the persons in whom it is legally vested.

Stamp on settlement of reversionary interest.

As to the stamp in respect of the reversionary interest, it has been decided that a settlement of a reversionary share in a trust fund is a settlement of a "definite and certain sum" (see the Stamp Act, 1891, Sched. SETTLEMENT), notwithstanding a power in the original settlement to vary securities, and notwithstanding that the interest is contingent or defeasible, *Onslow* v. *Commissioners, &c.*, [1891] 1 Q. B. 239; the Court refused to accede to the argument (which seems plausible), that "definite" refers to the amount of the fund and "certain" to the title of the settlor; the decision, if pursued to its logical results, requires that a settlement by the eldest of ten children (the other nine being all infants) of the share and interest of the settlor in a fund held in trust for such of the children as attain twenty-one, must be stamped with duty on the whole fund. It is believed that in practice the *ad valorem* would, in this case, be assessed on one-tenth of the fund.

(*e*) See p. 469 *et seq.*, notes.

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is put to her ELECTION *to* CONFIRM *the* SETTLEMENT *when of age* (*a*).

Recitals.

PARTIES, A., *husbd*, 1; B., *wife*, an infant under the age of twenty-one yrs, 2; C., D., & E., *trees*, 3. *Recite intd marre*,

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As to settlements of the wife's property where she is an infant.

(*a*) Prior to the M. W. P. A., 1882, where the intended wife was an infant, a settlement of her property, with the concurrence of the intended husband, though not binding on her, was binding on him, and effectual as to any interest which he would have taken maritally in the absence of a settlement (see 3 Dav. Prec. 647); but beyond this it could only be made effectual by the wife being put to her election, where property was also settled by the husband or some other person, so as to preclude her from taking any benefit from such property except on the terms of confirming the settlement of her own property; or else obtaining the sanction of the Court to the settlement under the Infant Settlements Act, 1855 (see Prec. XI., *infra*). See p. 557, note.

Effect of M. W. P. A., 1882.

Having regard to *Hancock* v. *Hancock*, 38 Ch. D. 78, and *Stevens* v. *Trevor Garrick*, [1893] 2 Ch. 307, the rule does not appear to be altered by the Act, but as this is perhaps not quite clear it is advisable, where the Infant Settlements Act cannot be had recourse to, to insert either a clause expressly putting the wife to her election, if property is also settled by the husband or any other person, or a covenant by the husband that the wife shall make or confirm the settlement when of age, with a provision protecting the trustees from responsibility for not taking proceedings under the covenant. In either case, the wife should by a short deed make or confirm the settlement on attaining her majority.

Effect of settlements by infants.

A settlement, however, by an infant, if it is for his or her benefit (which a settlement of the wife's existing or future property on marriage of the ordinary type would be considered to be: *Smith* v. *Lucas*, 18 Ch. D. 531) is voidable only and not void, so that the infant on coming of age can confirm it; *Re Hodson*, [1894] 2 Ch. 421, and if nothing is done by the infant after attaining majority amounting to a repudiation, it will stand: *Smith* v. *Lucas*, *Burnaby* v. *Equitable Reversionary*, *&c.*, *Society*, 28 Ch. D. 416; *Duncan* v. *Dixon*, 44 Ch. D. 211; and the right of repudiation is of course personal to the infant; and it must be exercised within a reasonable time; *Carter* v. *Silber*, [1891] 3 Ch. 553, on app. nom. *Carter* v. *Hasluck*, [1892] 2 Ch. 278, in H. L. nom. *Edwards* v. *Carter*, [1893] A. C. 360; *Re Jones*, [1893] 2 Ch. 461. As to what amounts to such an adoption or confirmation on the part of the infant as to bar the right of repudiation (which is often a difficult question), see *Davies* v. *Davies*, L. R. 9 Eq. 468; *Milner* v. *Lord Harewood*, 18 Ves. 277; *White* v. *Cox*, 2 Ch. D. 387; *Smith* v. *Lucas*, *ubi sup.*, where the confirmation by the wife of the settlement *quoad* certain interests settled or agreed to be settled by her was held not to prevent her from repudiating it as to property subsequently accruing; see also the note to the precedent of a deed of confirmation, *infra*, p. 557. On the principle of election the wife cannot, on coming of age, repudiate without making compensation to the parties who are thereby disappointed out of any interests taken by her in any other property bound by the settlement: *Codrington* v. *Lindsay*, L. R. 8 Ch. 578, *s.c.* nom. *Codrington* v. *Codrington*, L. R. 7 H. L. 854; but, after some conflict of authority, it appears to be now settled that compensation cannot be awarded out of any interest as to which the wife is by the settlement restrained from anticipation; *Re Vardon*, 31 Ch. D. 275; *Hamilton* v. *Hamilton*, [1892] 1 Ch. 396. The principle of

p. 450: AND WHAS the sd A., as one of the six chln now livg of K., deced, by his wife, L., will, in the event of his survivg the sd L., become entled under the will of the sd K., wch was proved on the —— day of —— in the —— Registry, to one eql sixth pt or share, or to some other pt or share, or to the whole of a sum of £—— 2¾ p.c. Consold Stk now standg to the credit of a cause of M. *v.* N., *add referce to record*, the acct of, &c.: AND WHAS the sd A. is carrying on the business of —— in co-ptnp with X. & Y. under the firm of ——; AND WHAS the sd B., as one of the chln of H., by G. his late wife, is entled in posson contingently on her attng the age of twenty-one yrs or marrying to one eql fourth pt or share of the trust funds & ppty subjt to the trusts of an indre dated, &c., & made, &c., wch now consist of the parlars specified in the sd schdle hto, And in the event of the death of her brother Q. under the age of twenty-one yrs, will become entled in posson (subjt to the like contingency) to one eql third pt or share of anor such fourth pt or share, & of the accumulons, if any, of such share, or of so much of the same respively as shl not have been applied under the trusts of the sd indre of, &c.: AND WHAS, upon the treaty for the sd intd marre, it was agrd that the sd sevl trust premes to wch the sd A. & B. are, or may become resply entled as hinbfe is recited shd be assned to the sd C., D., & E., upon the trusts hinafter decld concerng the same resply, And it was also agrd that the sd A. shd enter into the covt hinafter contd for paymt of an anny to be held upon the trusts hinafter decld, & that such anny shd be collaterally secd in mner hinafter appearg, & that these psnts shd contn such other provons as are hinafter expd: NOW THIS INDRE WITNETH, *assnmt by A. with concurrce of B. to trees of his contingent intt in the Consols*, p. 455, *form* I., *&* p. 457, *note, mutatis mutandis; 2nd witnessg clause; Similar assnmt by B. with concurrce of A., see form in note,* p. 456, *of* "ALL THAT one eql fourth pt or share to wch the sd B. will upon the sd intd marre become entled as afsd, AND ALL that one eql third pt or share of anor fourth pt or share, & of

Husband's title to contingent interest in Consols in Court.

Wife's title to reversionary interest and possible further share.

Agreement for settlement.

And for covenant to pay annuity.

Witnesseth.

Assignment of reversionary interests.

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election may apply although the settlement is void and not merely voidable, see *Codrington* v. *Codrington*, *ubi sup.*

See further, as to settlements on the marriage of infants, 3 Dav. Prec. 647 *et seq.*, Vaizey, Ch. 2.

PREC. VI.

the accumulons thof to wch she is contingently entled under the trusts of the same indre of, &c., AND ALL other (if any) the pt or share, or pts or shares, to wch she is now, or will in any event, become entled of or in the trust funds & ppty subjt to the trusts of the same indre," p. 455; AND IT IS HBY AGRD & decld that, &c., *Trust for investmt*, pp. 458 *to* 463, *forms* II. *to* VIII. (*a*); *Power to vary investmts*, p. 464; AND SHL, durg the life of the sd A. pay the income of the sd premes first hinbfe assned, & the ppty representg the same (wch are hinafter called the husbd's fortune), unto the sd A., & his assns: *Provo chargg husbd's life intt with mtce of his wife & chln*, p. 473. AND IT IS HBY AGRD that after the death of the sd A. the sd trees or tree shl pay the income of the husbd's fortune to the sd B., *for life witht anticipon*, p. 467, *form* XVIII.: AND SHL, durg the life of the sd B., pay the income of the sd premes secondly hinbfe assned, & the ppty representg the same (wch are hinafter called the wife's fortune), &c., *trust for B. for life witht anticipon*, p. 466, *form* XV.; *And after her death to A. for life, determinable on bkptcy, &c.*, p. 470, *form* XXIII., but so nevs, that such cesser or determinon of the intt of the sd A. shl not affect his rt to exercise, or concur in exercisg, the sevl powers hby given to him of consentg to investmts & changes of investmt, & of makg apptmts in favour of the issue of the sd intd marre, & of consentg to advancemts & apptg new trees. *Discronary trust for applicon of the income of the wife's fortune on husbd's bkptcy, &c., for the benefit of himself & family*, p. 470, *form* XXIV., *or* p. 472, *form* XXV.; [*or if he is not to take a protected life intt insert, in lieu of this form* XXVI. (*b*):] AND IT IS HBY AGRD & DECLD that

Trusts during lives of husband and wife.

Trusts after death

Variation for determinable life interest.

(*a*) If A.'s life interest in B.'s fortune is determinable, but not protected, the provision as to consents to investments may be, "with the consent of the sd A. & B. durg their jt lives, & of the survor of them durg his or her life, & after the death of such survor at the discron of the sd trees or tree (but so that as regards the premes secondly hinbfe assned, the consent of the sd A. to an investmt or change of investmt shl not be required in the event of the determinon of the trust hinafter decld in his favour concerng the same premes)."

Variations for

(*b*) If the husband takes the first life interest determinable on bankruptcy, in the wife's fortune, substitute for the trusts in the text, "*Life intt* after the death of the survor of them the sd A. & B., the sd trees or tree shl stand possed of the husbd's fortune, & also of the wife's fortune, & the income thof resply, *Usual trusts for issue of marre, as A. & B. or survor shl appt*, p. 474, *form* XXX., *or* p. 475, *form* XXXI.; *Trust for chln in default of apptmt*, p. 476; *Hotchpot clause*, p. 477; *Advancemt clause*, p. 480; *Addon to hotchpot & advancemt clauses, providg for valuon of land, &c.*, p. 481, *form* XLII.; *Ultimate trusts of husbd's & wife's fortunes*, p. 481, *form* XLIII., *with varion in note; Agrmt to settle wife's other & after-acquired ppty*, p. 505, *Covt by husbd with trees to pay anny*, p. 491, *form* LVII., *saying*, "such yrly sum as is hinafter mentd, that is to say, durg the jt lives of the sd A. & B. the sum of £——, & in case the sd B. shl die in the lifetime of the sd A., & while any issue of the sd intd marre shl be livg, then durg the remr of the life of the sd A. if & so long as any issue of the sd intd marre shl be livg, the sum of £——"; AND IT IS HBY AGRD & DECLD that the sd yrly sum of £—— or £——, as the case may be, shl be held by the sd trees & tree upon the trusts hinbfe decld concerng the income of the trust premes secondly hinbfe assned, with the exception that after the death of the sd B., if the same shl happen in the lifetime of the sd A., the sd trees or tree shl pay or apply the yrly sum, if any, then payable under the covt lastly hinbfe contd to the psons or pson & in the mner to whom & in wch such income wd be payable or applicable if the said A. were then dead; AND THE SD A. doth hby chge his share in the net profits of the sd business, with the paymt of the sd respive yrly sums of £—— & £—— at the times & in mner afsd: *Power to invest in pchase of land*

of survivor of husband and wife.

Covenant to pay annuity variable in amount.

Trusts of annuity.

Charge on profits of business.

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determinable on bkptcy, p. 469, *form* XXII.," with the addition, if so intended, of the clause in the text, as to the exercise of the powers after such determination. "AND SHL, after the death of the sd A., or the determinon during his life of the trust hinbfe decld of the sd income in his favour, pay the income of the wife's fund to the sd B., &c., *continue life intt to wife*, p. 467, *form* XVIII.;" for a protected life interest, add, "& shl, after the death of the sd B., & the determinon, &c.," *continue discronary trust*, p. 470, *form* XXIV.; *or, where the life intt is not to be protected, insert form* XXVI.

husband taking first life interest in wife's fund.

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p. 502, *form* LXXVI., *or* p. 504, *form* LXXVII., ; *Power to eir pty to make a settlemt on a future marre,* p. 509, *form* LXXIX.; *Clause puttg wife to her election to confirm settlemt when she comes of age,* p. 514 (*a*); *Power to trees, at cost of A.,* "or of the trust este," *to obtain a stop order on,* "the share & premes first hinbfe assned," p. 114, *mutatis mutandis; Power to trees to settle questions, & to arrange & compromise,* p. 515, *Special power to settle accts, &c.,* p. 515, *form* LXXXVI.; *Clauses as to apptmt & indemnity of trees,* p. 519, *form* XC., *&* p. 521, *form* XCV.; *Power to trees to employ agents, &c.,* p. 521. IN WITS, &c. (*b*).

(*a*) The following is a form of covenant by the intended husband that the intended wife shall make or confirm the settlement when of age; but the liability in damages for the default of the wife or those claiming under her in the event of her death is one which he might be often unwilling to incur.

Covenant by husband that wife shall make or confirm settlement when of age.

"And in psuance of the sd recited agrmt, & in conson of the sd intd marre, the sd, *husbd,* doth hby covt with the sd, *trees,* that if the sd intd marre shl take place, then as soon as practicable after the sd, *wife,* shl have attned the age of twenty-one yrs, she the sd, *wife,* or in the event of her death under that age then as soon as practicable after her death, her [hrs] exs or ads, & also the sd, *husbd,* his exs or ads in respt & to the extent of any intt wch he or they may by any means acquire, & all other necy pties, if any, shl at the cost of the trust este exte & do all such [convces, assnmts, assurces] transfers, instrumts, & things as shl be necy or pper for effectually vestg in the sd trees or tree all, &c., *pcels,* Upon trust, &c." [*or if the intd wife joins in the settlemt as provd in the text,* "all or any such assurces, deeds, & things as shl be necy or pper for effectually confirmg these psnts & makg the same legally bindg upon the sd, *wife,* her hrs, exs, ads, & assns, & for effectually vestg, &c.," *as above*]. (See note to Prec. XV., p. 557.) "PROVD ALWAYS that the sd trees or tree shl not be under any obligon to take pcdgs under the covt of the sd, *husbd,* lastly hinbfe contd or incur any responsibility for any omission so to do."

(*b*) Notice of the settlement must be given to the trustees of the will, and a stop order obtained on the fund in court. As to stop orders, see p. 114, note. As to the stamp in respect of the reversionary interest, see p. 535, note.

VII.

SETTLEMENT, *on Marriage, of* REGISTERED LAND *belonging to* HUSBAND *by means of a* TRUST *for* SALE, *and* DECLARATION *of* TRUST *of the* PROCEEDS *of Sale.*

PREC. VII.

PARTIES, A., *husbd*, 1; B., *wife*, 2; C., D., & E., *trees*, 3. *Recite intd marre*, p. 450; AND WHAS the sd A. is seised in fee simple in posson of the hds hby assned free from incumbces & is also regrd under the L. T. A., 1875 (& 1897), as proprietor thof with a —— title; AND WHAS upon the treaty for the sd intd marre it was agreed that the sd hds shd be settled in mner hrafter appearg; AND WHAS in psuance of the sd agrmt the sd A. hath, with the approbon of the sd B., exted a transfer of the sd hds to the sd C., D., & E. (*c*), containg an applicon for a restron that until further order, no entry affectg the sd hds shl be made, & that no lien by deposit shl be created thron witht the consent of the sd A. & B. or the survor of them (*d*): NOW THIS INDRE WITNETH that in psuance of the recited agrmt & in conson of the sd intd marre, the sd A., **as benefl owner**, with the approbon of the sd B., doth hby grant unto the sd C., D., & E., all those lands regrd under the title No. ——, in the parish of —— in the district of —— in the city of —— to hold the same unto the sd C., D., & E., & their hrs, TO THE USE of the sd A., & his hrs, until the sd intd marre, & after the solemnon thof, TO THE USE of the sd C., D., & E., their hrs & assns, UPON TRUST, &c., *Trust for Sale, &c.*, p. 493, *Declon of trust of sale moys & rents until sale*, p. 495, *form* LXIII. AND IT IS HBY AGRD & decld that the sd trees or tree shl with the consent in writg of the sd *husbd & wife*, or the survor of them, durg their, his, or her lifetime, & after the death of such survor at the discron of the sd trees or tree, invest the residy or net moys to arise from the sale under the trust for

Recitals.

Habendum.

To uses.

Trust for investment.

(*c*) The transfer will be expressed to be made "in conson of a marre intd to be solemnized betn A., of ——, & B., of ——."

(*d*) It is probable that the deposit of a land certificate containing a restriction that no entry is to be made without certain consents, will prevent the deposit made without those consents from creating a lien, but until this is settled it will be proper to apply for a restriction in the form given above.

PREC. VII. sale hinbfe contd of the sd hds, or any of them, as & when the sd moys shl be reced, in the names or name [or under the legal control] of the sd trees or tree in or upon, &c., *Investmts, see* pp. 459, 463; *forms* III.—VIII.; *Power to vary investmts,* p. 464; *Trusts for husbd for life,* p. 467 (*a*), *form* XVI.; *Wife for life witht anticipon, form* XVIII.; *usual trusts for issue of marre, as in Prec.* I., *with the addon to hotchpot & advancemt clauses providg for valuon of land,* p. 481, *form* XLII. (*b*); *Ultimate trust in default of issue, for husbd,* p. 481, *form* XLIII.; *Power to manage until sale,* p. 496, *form* LXVI.; *or* p. 498, *form* LXVII.; [*Leasg powers,* p. 498, *form* LXVIII., *or* p. 499, *form* LXIX.; *or clause givg powers by referce to the S. L. Acts, form* LXXIII. p. 501;] *Power to invest in the pchase of land* (*c*), p. 502, *form* LXXVI., *with the varion in note* (*e*); *Clauses as to apptmt & indemnity of trees,* p. 519, *form* XC., *&* p. 521, *form* XCV.; *Power to trees to employ agents, &c.,* p. 521. IN WITS, &c.

VIII.

PREC. VIII.

CONVEYANCE, *on Marriage, of* FREEHOLDS *belonging to* WIFE *in* TRUST *for* SALE, *with a* DECLARATION *of* TRUST *of the* PURCHASE MONEY *by* REFERENCE *to a* SETTLEMENT *of* EVEN DATE. POWER *to sell for* FEE FARM RENTS. VARIATIONS *for an* UNDIVIDED SHARE (*d*).

PARTIES, A., *husbd,* 1; B., *wife,* 2; C., D., & E., *trees,* 3.

Recitals. *Recite intd marre,* p. 450; *Title of B., as in a Convce on Sale,*

Waste (*a*) As to whether a tenant for life under a settlement of this nature, is impeachable for waste, see *Re Ridge*, 31 Ch. D. 504, and as to whether the trustees may commit waste, see *Seagram* v. *Knight*, L. R. 2 Ch. 630; *Waldo* v. *Waldo*, 12 Sim. 107, and as to whom the proceeds of waste by the trustees belong, see *Cowley* v. *Wellesley*, L. R. 1 Eq. 656; 35 Beav. 635; *Re Harrison*, 28 Ch. D. 220.

(*b*) As the interests of the children are contingent on their attaining 21, &c., the 43rd s. of the C. A. 1881 applies, not the 42nd.

(*c*) Where land is settled, a power to purchase adjoining land may be useful.

(*d*) As to an order of court giving possession to the equitable tenant for life, or authorising her to exercise the powers of the S. L. Acts. see *Re Bagot*, [1894] 1 Ch. 177; *Re Newen*, [1894] 2 Ch. 297. For registered land, see p. 541.

PREC. VIII.

see Vol. I.: *Agrmt for settlemt as in last Prec*: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson, of the sd intd marre, the sd B. **as settlor**, with the approbon of the sd A., doth hby grt unto the sd C., D., & E., *Pcels* (*e*), *see Vol. I.*, p. 385: To HOLD the same UNTO the sd C., D., & E., & their hrs, TO THE USE of the sd B. & her hrs until the sd intd marre, & after the solemnon thof, TO THE USE of the sd C., D., & E., their hrs & assns, UPON TRUST, &c., *Trust for sale*, p. 493; *Declon of trust of sale moys, &c.*, p. 496, *form* LXIV.; *Power to sell for fee farm rents*, p. 495, *form* LXII.; *Power to manage until sale*, p. 496, *form* LXVI., *or* p. 498, *form* LXVII.; [*Leasg powers*, p. 498, *or* 499, *form* LXVIII. *or* LXIX. (*f*), *or clause givg powers by referce to the S. L. Acts*, p. 501, *form* LXXIII.;] *Clause as to apptmt of trees*, p. 519, *form* XC. IN WITS, &c. (*g*).

Witnesseth.

Grant.

Habendum.

IX.

PREC. IX.

CONVEYANCE, *on Marriage, of* FREEHOLDS, LEASEHOLDS *and* COPYHOLDS, *belonging to* HUSBAND *in* TRUST *for* SALE, *with a* DECLARATION *of* TRUST *of the* PURCHASE MONEY *by* REFERENCE *to a* SETTLEMENT OF EVEN DATE. VARIATION *where* PART *of the Freeholds is* REVERSIONARY (*h*).

PARTIES, A., *husbd*, 1; B., *wife*, 2; C., D., & E., *trees*, 3. *Recite intd marre*, p. 450; *Lease & devolon thof to A., & title of A. to freehds & copyhds, as in a Convce on Sale, see Vol. I.*:

Recitals.

(*e*) For an undivided share, say, "ALL THAT eql undivided —— pt or share, & all & every other, if any, the pt or share, pts or shares, of or wch the sd B. is seised, possed, or entled, of & in, *pcels*."

Variation for undivided share.

(*f*) For an undivided share insert the addition in form LXXI, p. 500, and power to partition, p. 500, form LXXII., unless the power is given by reference to the statute, as in form LXXIII.

(*g*) See p. 480, note (*d*).

(*h*) As to registered land, see p. 541.

PREC. IX.

Agreement for settlement.

Witnesseth.

Grant of freeholds.

Habendum.

Further witnesseth.

Assignment of leaseholds.

Further witnesseth.

Covenant to surrender copyholds.

Declaration of trusts.

AND WHAS, upon the treaty for the sd intd marre, it was agrd that the sd freehd, leasehd, & copyhd hds shd be assured to the sd C., D., & E., their hrs, exs, ads, & assns resply, in the mner & upon the trusts hinafter expd concerng the same resply: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the sd intd marre, the sd A., **as settlor**, with the approbon of the sd B., doth hby grt unto the sd C., D., & E., *Freehd pcels, see Vol. I.*, p. 385, TO HOLD the same (*a*), UNTO the sd C., D., & E., & their hrs, TO THE USE of the sd A., & his hrs, until the sd intd marre, & aftwds TO THE USE of the sd C., D., & E., their hrs & assns, UPON THE TRUSTS, & subjt to the powers & provons hinafter decld & contd concerng the same: AND THIS INDRE ALSO WITNETH that in psuance of the sd agrmt, & in conson of the sd intd marre, the sd A., **as settlor** (*b*), with the approbon of the sd B., doth hby assn unto the sd C., D., & E., *Leasehd pcels, by referce to lease, see Vol. I.*, p. 389, *Habendum to C., D., & E., subjt to rent & covts, as in a Convce on sale, see Vol. I.*, p. 404: IN TRUST for the sd A., until the sd intd marre, & after the solemnon thof, UPON THE TRUSTS, &c., *as above*: AND THIS INDRE FURTHER WITNETH that in psuance of the sd agrmt & in conson of the sd intd marre, *Covt by A.*, "**as settlor**" (*c*), *with C., D., & E.*, "in case the sd intd marre shl take place," *to surrender copyhds, as on sale, see Vol. I.*, p. 443, *but*, "at the cost of the sd A. or his hrs," TO THE USE of the sd C., D., & E., their hrs & assns, to be holden, &c. UPON THE TRUSTS, &c., *as above*; *Declon of trust* "after the sd intd marre," *until surrender, see Vol. I.*, p. 444: AND IT IS HBY agrd & decld that the sd C., D., & E., their hrs, exs, ads, & assns resply shl, from & after the sd intd marre, stand seised & possed of the sd freehd, leasehd, & copyhd hds & premes hby grted, assned, & covted to be surrendered resply, UPON TRUST &c., *trust for sale*, p. 493; *Declon of trusts of sale moys & rents till sale*, p. 496, *form* LXIV.; *Power to manage real*

(*a*) If the freeholds are partly reversionary, add here, "subjt as to the sd hds secondly hinbfe descd, to the life este or intt thrin of the sd K., under the sd recited indre, &c., *or* 'will.'"

(*b*) See p. 455, note.

(*c*) See p. 455, note. That the statutory covenants may be implied in the case of a covenant to surrender copyholds, see Vol. I., p. 408, note.

PREC. IX.

este until sale, pp. 496 *or* 498, *form* LXVI. *or* LXVII.; [*Leasg, &c., powers*, p. 498, *form* LXVIII., *or* p. 499, *form* LXIX., *or clause givg powers by referce to the S. L. Acts*, p. 501, *form* LXXIII.] (*d*); *Clause as to apptmt of trees*, p. 519, *form* XC.: PROVD ALWAYS, & it is hby agrd that the sd trees or tree shl be under no responsibility whatever with respt to the paymt of the rent or the pformance or observce of the covts & condons reserved by & contd in the sd lease of, &c., or any losses, costs, damages, or expses occasd by the non-paymt of the sd rent or the breach of any of the sd covts or condons, & shl be entled to be indemnified & reimbursed in the fullest mner out of the trust este & premes in respt of all costs, damages, & expses incurred by them or him in relon to the sd leasehd premes (*f*). IN WITS, &c.

Indemnity to trustees in respect of leaseholds (*e*).

X.

PREC. X.

SETTLEMENT, *on Marriage, of the* PROCEEDS *of sale of* REAL *estate belonging to* HUSBAND CONVEYED *in trust for sale by a* DEED *of* EVEN DATE (*g*), (*with* VARIATIONS *where the interest is* REVERSIONARY), *and of a* SUM COVENANTED *to be* PAID *by the* WIFE'S FATHER *on his death. The* HUSBAND *takes the* FIRST LIFE INTEREST *in the whole settled property*, SUBJECT TO *paying an* ANNUITY *to the* WIFE. TRUSTS *for* ISSUE, *giving* NO POWER *of* APPOINTMENT *to the* PARENTS, *the* ISSUE *of any* CHILD DYING *in their lifetime being* SUBSTITUTED (*h*).

PARTIES, A., *husbd*, 1; B., *wife*, 2; C., *wife's father*, 3; D., E., & F., *trees*, 4. *Recite intd marre*, p. 450; *Convce or*

Recitals.

(*d*) Where the freeholds are partly reversionary, insert, *addon to powers of sale & leasg*, p. 499, *form* LXX., *saying*, "such pts of the freehd hds hby assured as are revy."

(*e*) See 2 Dav. Prec., Pt. I, p. 424, note.

(*f*) See p. 517, note (*d*).

(*g*) See the last two Precedents.

(*h*) This form of trusts for the issue is exceptional, and not to be recommended.

PREC. X.

conveces in trust for sale of even date, p. 454; *Agrmt by C. to enter into covt for paymt of the* "ppal sum & intt hinafter mentd," p. 454; *Agrmt for settlemt of wife's other & after-acquired ppty*, p. 454: NOW THIS INDRE WITNETH, that in psuance of the sd agrmt, & in conson of the sd intd marre, it is hby agrd & decld that the sd, *trees*, their exs, ads, & assns, shl stand possed of the residy or net moys to arise from the sale, under the sd trust for sale in the [sevl] recited indre [s] of even date hwith contd (*a*), of the sd hds & premes thby [resply] assured (*b*), or any pt thof (*c*), UPON TRUST that the sd *trees*, or the survors or survor of them, or other the trees or tree for the time being of these psnts (hinafter called the sd trees or tree), shl (*d*), with the consent in writg of the sd, *husbd*, & *wife*, or the survor of them, durg their, his, or her lifetime, & after the death of such survor, at the discron of the sd trees or tree, invest the same residy or net moys, as & when the same shl be reced, in the names, &c., *remr of trust for investmt, see* pp. 458—463, *forms* II.—VIII., *Power to vary investmts*, p. 464; *Trust durg jt lives for paymt of anny to wife out of the income*, "of the sd trust premes & the ppty representg the same hinafter called the husbd's fortune, &

Wit-nesseth.

Declaration of trusts of husband's fortune.

To invest.

Income during joint lives.

(*a*) If the settlement comprises undivided share of land say, "or to be reced for equality on parton."

(*b*) Or, "Grted, assned, & covted to be surrendered," or as the case may be.

Variation for reversionary interest.

(*c*) If the settlement comprises a reversionary interest in real estate "& also (from & after the dece of the sd *tenant for life*), of any investmts representg moys arisg from the proceeds of any sale [or reced for equality on parton] made in his lifetime, of the sd hds & premes, or any pt thof, wch may be transferred to the sd trees or tree."

The same.

(*d*) In the case mentioned in the last note, substitute as follows from this point, "eir retain any such investmts as last afsd, so long as the sd trees or tree may think fit, or shl at any time or times with the consent, &c., *as above*, sell, call in, or convert into moy the same or any pt thof, & shl invest the moys produced thby, & also the sd residy or net moys arisg from any sale [or reced for equality on parton] made in the lifetime of the sd, *tenant for life* witht his concurrce, or after his dece, as & when the same shl be reced, in the names, &c."

residue of income to husbd, p. 468, *form* XXI.: AND AFTER the death of such one of them the sd, *husbd, & wife*, as shl first die, shl pay the whole of the sd income to the survor of them, or his or her assns, durg his or her life, & so that in the case of the sd, *wife*, the same shl durg her now intd coverture be for her septe use, witht power of anticipon; AND AFTER the death of the survor of the sd, *husbd*, &, *wife* shl stand possed of the husbd's fortune in trust for such of the chln of the sd intd marre livg at the death of such survor, & such of the chln livg at the death of such survor of any child of the sd intd marre who shl then be dead, as being male shl attn the age of twenty-one yrs, or being female shl attn that age or marry, & if more than one, as tenants in common, in eql shares, but so that the chln, being objects of this trust, of any child of the sd intd marre who shl have died, shl take eqlly betn them the share only wch their parent wd have taken if livg: [*Mtce & accumulon clauses*, pp. 477 & 479, *or short form*, p. 480, *extended to*, "child or grandchild of the sd intd marre"; *Advancemt clause*, p. 480;] *Ultimate trust of husbd's fund*, "if there shl be no child or grandchild of the sd intd marre who shl attn a vested intt under the trusts hinbfe decld," p. 481; *Trusts of rents & profits of real este until sale*, p. 496, *form* LXV.; [*Power to invest in the pchase of land*, p. 502;] *Covt by C. that his repves shl pay a sum of £—— on his death, with power to him to pay it in his lifetime*, p. 488, *form* LIV.; *Clause for proton of trees*, p. 492, *end of form* LVII.: AND IT IS HBY DECLD that the sd trees or tree shl stand possed of the sd sum of £——, when the same shl be reced, upon the trusts & subjt to the powers & provons hinbfe decld & contd resptg the net moys to arise from any sale under the trust for sale in the recited indre of even date hwith contd, but not so as to increase the sd anny of £—— payable to the sd B., & save & except that if there shl be no child or grandchild of the sd intd marre who shl attn a vested intt under the trusts hinbfe decld, then & in such case, & from & after the death of the survor of the sd A. & B. & such default or failure of their issue, wch shl last happen, the sd trees or tree shl stand possed of the sd sum of £—— & the investmts representg the same, & the income thof or so much thof resply as shl not have been applied or disposed of under the trusts or powers

During life of survivor.

Trusts for children and issue.

Ultimate trust.

Trusts of sum covenanted to be paid by wife's father.

PREC. X. hinbfe contd, in trust for the sd C. *Agrmt for settlemt of wife's other & after-acquired ppty*, p. 505, *with the varion in note* (*a*), p. 508, *saying*, "child or grandchild"; "son or grandson"; "daur or granddaur"; *Power to trees to settle questions, &c.*, p. 515; *Clauses as to apptmt & indemnity of trees*, p. 519, *form* XC., p. 521, *form* XLV.; *Power to trees to employ agents, &c.*, p. 521. IN WITS, &c.

XI.

PREC. XI.

SETTLEMENT, *on Marriage with the* APPROVAL *of the* CHANCERY DIVISION, *under the* INFANT SETTLEMENTS ACT, 1855 (*a*), (18 *&* 19 *Vict. c.* 43) *of the* WIFE'S REVERSIONARY INTEREST *in* PERSONALTY, *and in* PORTIONS *charged on* REAL ESTATE, *the* ELDEST SON *of the marriage being* POSTPONED *to the younger children.* COVENANT *by* WIFE'S FATHER *to pay an* ANNUITY VARIABLE *in* AMOUNT. VARIATIONS where *the* INFANT *is a* WARD *of* COURT. DECLARATION to *prevent* SATISFACTION *of portion* (*b*).

PARTIES, A., *husbd*, 1; B., *wife*, an infant of the age of —— yrs, 2; C., *wife's father*, 3; D., E., & F., trees, 4. *Recite intd marre*, p. 450; *B.'s title to revy intt under settlemt & deed poll of apptmt*, p. 451; *Parlars of trust ppty*, p. 451; *Wife's title to sum raisable under portions term*, p. 451, *form* V.; AND WHAS, upon the treaty for the sd intd marre, it was agrd that the trust moys, stks, funds, shares, & secs, to wch the sd B. is entled by virtue of the indre & deed poll first hinbfe mentd, & the sd sum of —— to wch she the sd B., will become entled under the trusts of the term of —— yrs limd by the secondly hinbfe-mentd indre of, &c., & the secondly hinbfe-mentd

Recitals.

Agreement for settlement.

(*a*) See Short Titles Act, 1896.

(*b*) As to settlements on the marriage of infants, see 3 Dav. Prec., pp. 647, 891; Vaizey, ch. 2; Seton on Decrees, pp. 891, *et seq.*; above, p. 536, note. For various points arising on the Infant Settlements Act, see *Re Sampson and Wall*, 25 Ch. D. 482; *Re Phillips*, 34 Ch. D. 467; *Seaton* v. *Seaton*, 13 App. Cas. 61; *Re Leigh*, 40 Ch. D. 290; *Re Scott*, [1891] 1 Ch. 298; 34 Sol. J. 599.

deed poll, shd be assned to the sd D., E., & F., in mner hinafter appearg, to be held upon the trusts hinafter decld concerng the same: *Agrmt as to settlemt of wife's other & after-acquired ppty*, p. 454: AND WHAS, upon the treaty for the sd intd marre, it was agrd that further provon shd be made for the sd B. by a settlemt of the real estes of the sd A., situate at ——, wch settlemt has been effected by an indre bearg even date hwith & made, &c.: AND WHAS by an order of the Chancery Divon of the High Ct of Justice made by Mr. Justice —— on the —— day of —— (*c*), in the mre of B., an infant, by C., her next friend, *or* "gdian," And in the mre of the Infant Settlemts Act, 1855, whby, after premisg that the sd judge was of opinion (*d*) that the settlemt proposed to be effected by [an indre of even date hwith &] this indre was a pper settlemt to be made upon, or in contemplon of the marre of the infant B. with the sd A. (*e*) of the ppty of the infant comprised thrin & that the indre [s] thrin refd to being [the sd indre of even date hwith &] this indre was a [were] pper indre [s] for givg effect to such settlemt the sd judge did, psuant to the Act of Parliamt, sanction & approve of the same, & did order that the sd B. be at liberty, in contemplon of her marre with the sd A., to exte the same accdly (*f*): AND WHAS this indre has been approved of by the sd judge as appears by the signature of the Master attached to his chambers in the margin hrof: NOW THIS INDRE WITNETH that in psuance of the sd agrmt in this behalf, & in conson of the sd intd marre, the sd B., with the sanction of the Chancery Divon of the High Ct of Justice, & with the approbon of the sd A., &c., *continue assnmt of revy intts*, p. 455, *see note*, p. 456, *the portion moy being descd as*, "ALL THAT the sd sum of £——, or other the sum or sums, to wch the sd B. is or will, upon the dece of the sd C., or orwise, become entled under the trusts of the sd term of ——

Agreement for real settlement of even date.

Sanction of Chancery Division.

Witnesseth.

Assignment by wife with sanction of court.

(*c*) Where the infant is a ward of Court, insert here a reference to the proceedings making her a ward as "in the action X. *v.* Y., &," add reference to record, and make the variations in the following notes.

(*d*) "That the sd intd marre was a fit & pper marre, &."

(*e*) Say "of such marre," and omit reference to the infant's property.

(*f*) "And that upon due exon of [the sd indre of even date herewith &] this indre by the sd A. & B., they should be at liberty to intermarry."

PREC. XI.

Trusts.

Income during lives of husband and wife.

rusts after death of survivor.

Agreement for settlement of wife's after-acquired property (*d*).

yrs limd by the secondly hinbfe-mentd indre of settlemt, of, &c., & the secondly hinbfe-mentd deed poll bearg even date hwith, as hinbfe recited, & all intt to become payable in respt of the same sum or sums" (*a*); AND IT IS HBY AGRD & DECLD that the sd D., E., & F., their exs, ads, & assns, shl after the sd intd marre stand possed of the sd premes hinbfe assned, UPON TRUST that, &c., *Trust for investmt*, pp. 458 to 463, *forms* II. to VIII. (*b*); *Power to vary investmts*, p. 464; AND IT IS HBY AGRD & DECLD, &c., *First life-intt to B. durg jt lives, witht anticipon, with remr to the survor for life*, p. 468, *form* XX., *mutatis mutandis*: AND AFTER the death of such survor, shl stand possed of all the sd trust premes, & the moys & investmts representg the same resply, & the income thof, resply, *trusts for chln excludg eldest son takg*, "the first este in tail male under the limons of the sd indre of settlemt bearg even date hwith," p. 476, *form* XXXIV.; *Hotchpot*, p. 477, *Mtce & Accumulon*, pp. 478 *&* 479, *or short form*, p. 480 (*c*); *Advancemt*, p. 480; *Ultimate trusts of wife's fund*, p. 481; *Agrmt for settlemt of other & after-acquired ppty of B.*, p. 505, [*addg*, "with the exception that the powers of apptmt hinbfe given to the sd A. & B., & the survor of them, in favour of the yor chln of the sd intd marre shl be extended so that an eldest or only son for the time being entled to the first este in tail male, under the limons of the sd indre of settlemt bearg even date hwith, may be an object of the sd powers in the same mner as if he had been a yor child;"] *Power to wife to settle on a future marre pt of the ppty varying in amt with the no.*

Mode of settling portions charged on land.

(*a*) The portion, being a charge on the settled estates, would usually be assigned by a separate deed, in order that the settlement may not become a title deed to the real estate. The assignment would, in that case, recite the intended marriage, the wife's title to the portion as in the text, and the agreement for the assignment upon the trusts thereinafter declared, as in the text, and if the wife was an infant, the proceedings in Court as in the text. The operative parts would consist of the assignment, in consideration of the intended marriage, to the trustees in trust for the wife until the marriage, and afterwards, upon the trusts declared by the settlement of even date (see p. 458), and the clause as to appointment of trustees, p. 519, form XC.

(*b*) The powers of investment will be settled in chambers.

(*c*) Express maintenance and accumulation clauses ought to be inserted, as until a son attains twenty-one an infant son is not contingently entitled on his attaining twenty-one to the settled property, and therefore the statutory power is not applicable, 35 Sol. J. 150.

(*d*) See *Re Johnson*, [1891] 3 Ch. 48.

of chln of the intd marre, p. 509 *or* p. 510, *note* (*e*); *Covt by C. with D., E., & F. to pay anny varying in amt*, p. 491; *Trusts of anny*, p. 492, *form* LVIII.: AND THE SD C. doth hby exply declare that no paymt of eir of the sd annies shl, & that no legacy or other provon wch he may give or make by his will, or orwise, to or for the sd B., or to or for her husbd or issue (unless the contrary shl be exply directed in the will or other instrumt, by wch such legacy or other provon is given or made), shl be accted as being given or made in or towards satisfon of the sd sum of £—— raisable under the trusts of the term of —— yrs limd by the sd indre of, &c., secondly hinbfe recited; *Power to trees to settle questions, &c.*, p. 515, *clauses as to apptmt & indemnity of trees*, p. 519, *form* XC., & p. 521, *form* XCV.; [*Power to trees to employ agents, &c.*, p. 521]. IN WITS, &c. (*f*).

Declaration that annuity or legacies shall not be in satisfaction of portion (*e*).

Indorsmt (*g*) *on the first skin of the Engrossmt.*

In the High Ct of Justice, Chancery Divon.
[X. *v.* Y., *add referce to record* and.]
In the mre of B., an infant, by C., her next friend, *or*, "gdian," & in the mre of the Infant Settlements Act, 1855.

This indre has been settled & approved by Mr. Justice ——, as appears by an order, dated the —— day of ——.

L. M., Master.

(*e*) As to the satisfaction of portions generally, see *Montagu* v. *Lord Sandwich*, 32 Ch. D. 525.

(*f*) Notice of the settlement should be given to the trustees of the reversionary interest and the portions term; as to the latter, see *Re Hughes*, 2 H. & M. 89.

(*g*) For the form of affidavit verifying the engrossment, see Daniell's Chancery Forms, No. 1017.

XII.

PREC. XII.

SETTLEMENT *on Marriage of a* SUM *of Money intended to be* EMPLOYED *by the* HUSBAND *in his* BUSINESS *on* TRUSTS *for* HIMSELF *and his intended* WIFE, *and his* ISSUE *by* HER, *and by a* FORMER MARRIAGE (*a*), *and of* FURNITURE *belonging to the Husband, and a* SUM *of Money to be applied in the* PURCHASE *of other* FURNITURE *in trust for the* WIFE'S SEPARATE USE (*b*).

Recitals.

Issue by former marriage.

Payment of sum by husband to trustees.

PARTIES, A., *husbd*, 1; B., *wife*, 2; D. & E., *trees*, 3. *Recite intd marre*, p. 450: AND WHAS the sd A. has —— chln, by L. his former wife, now livg, all of whom are under the age of twenty-one yrs & unmarried: AND WHAS, in psuance of an agrmt made upon the treaty for the sd now intd marre, the sum of £6,000 has been pd by the sd A. to the sd D. & E. in trust, &c., p. 450, *form* II., And the sd A. has further agrd to assn unto the sd D. & E. the furniture & effects belongg to

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(*a*) As to limitations to the issue of either party by a former marriage or other collaterals being outside the marriage consideration, see p. 524, note.

As to settlements of existing furniture.

(*b*) The object in this case is to protect the husband's existing and future-acquired furniture from his creditors. As regards existing furniture, a settlement on marriage creating a simple trust for the wife's separate use is effectual for this purpose (*Jarman* v. *Wooloton*, 3 T. R. 618; 3 Dav. Prec., 818, note), as it does not leave the furniture in the "order and disposition" of the husband under the Bankruptcy Act (*Simmons* v. *Edwards*, 16 M. & W. 838; *Ex parte Sibeth*, 14 Q. B. D. 417), and as it enables the wife to execute a valid bill of sale of the furniture (*Walrond* v. *Goldmann*, 16 Q. B. D. 121).

As to settlements of future-acquired furniture.

As regards a settlement of future-acquired furniture, it would be invalidated in the event of bankruptcy by s. 47 (2) of the Bankruptcy Act, 1883, and would also be open to the objection referred to in the note to the next Precedent. These difficulties are avoided by settling as an existing fund the sum likely to be required for the purchase of the furniture. Another plan would be for the husband to covenant for payment of the sum to the trustees to be applied by them in the purchase of the furniture, which would, of course, be a good covenant, proveable in bankruptcy.

As to Bills of Sale Acts.

Marriage settlements of chattels do not, but settlements of chattels otherwise than on marriage do, require registration as bills of sale (Bills of Sale Act, 1878, s. 4); but the latter, if unregistered, will be void only as against the trustee in bankruptcy, or an execution creditor of the husband, or a subsequent registered absolute disposition, and will prevail over a subsequent registered bill of sale given by him by way of security, *Tuck* v. *Southern Counties Deposit Bank*, 42 Ch. D. 471. An agreement for a settlement on marriage is a "marriage settlement" within the Act, *Wenman* v. *Lyon*, [1891] 1 Q. B. 634; 2 Q. B. 192.

Sale by husband to wife.

On a sale by a husband to his wife of furniture in the house where they live, the wife is at law in possession of it, *Ramsay* v. *Margrett*, [1894] 2 Q. B. 18.

him, the sd A., wch are parlarly descd in the schdle hrunder written, upon the trusts hinafter expd concerng the same: NOW THIS INDRE WITNETH, that in psuance of the sd agrmt in this behalf, & in conson of the sd intd marre, it is hby agrd & decld that the sd D. & E., their exs, ads & assns, shl, after the sd intd marre, stand possed of the sum of £5,000, pt of the sd sum of £6,000 upon trust that, &c., *Trust for investmt,* pp. 458 to 463, *forms* II. to VIII., *power to vary investmts,* p. 464; *Trust of income for wife for life witht power of anticipon,* p. 466; *& after her death for husbd for life,* p. 467, *form* XVII.; *Provo chging husbd's life intt in,* "the sum of £5,000 & the investmts representg the same," *with mtce of chln,* "whether by his sd former wife L., or his sd now intd wife B.," p. 473, *mutatis mutandis* (*c*): AND IT IS HBY AGRD that after the death of the survor of the sd A. & B., the sd trees or tree shl stand possed of the sd sum of £5,000 & the investmts representg the same, & the future income thof, in trust "for the chln or remoter issue of the sd A., whether by his sd former or now intd wife," *continue power of apptmt,* p. 474, *form* XXX., *mutatis mutandis* (*d*); AND IN DEFAULT OF & subjt to any such apptmt, In trust, &c., *trust in default of apptmt for,* "the chln or child of the sd A., whether by his sd former or now intd wife," *if any have attned twenty-one, say,* "have attned, or shl attn, &c." p. 476, *form* XXXIII., *mutatis mutandis; Hotchpot clause,* p. 477; *Advancemt,* p. 480; *Ultimate trusts of,* "the sd sum of £5,000, & the investmts representg the same, & the income thof resply," *for A.*, p. 481, *saying,* "child of the sd A.;" *Power to lend trust funds to husbd,* p. 465: AND THIS INDRE ALSO WITNETH, &c., *assnmt by A.* (*e*) *of furniture in schdle to trees,* p. 455,

Witnesseth.

Trusts of one sum of money during lives of husband and wife.

After death of husband and wife.

Assignment of furniture.

(*c*) If so agreed, insert here, "And shl, durg the life of the sd, *husbd,* or durg such shorter period, &c., *continue discretionary trust of income for husbd & his family,* p. 472, *form* XXVI., *mutatis mutandis, second life intt to wife,* p. 467, *form* XVIII.," instead of the trusts of income for wife and husband and charge of maintenance as in the text.

(*d*) It may be desirable not to give the wife if surviving a power of appointment, or to restrict her power so that she cannot appoint to her own children more than their fair share. See note (*d*), p. 563.

(*e*) Although it may be doubtful whether the statutory covenant for

Trusts of other sum of money.

For purchase of furniture.

Trusts of furniture.

Trustees' indemnity.

form I., p. 457, *note*: IN TRUST for the sd A., until the sd intd marre, & after the solemnon thof, IN TRUST for the sd B. absolutely for her septe use; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & in conson of the sd intd marre, it is hby agrd & decld that after the sd intd marre the sd D. & E., their exs, ads, & assns, shl stand possed of the sum of £1,000, residue of the sd sum of £6,000, upon trust, that the sd trees or tree shl apply such sum, or any pt or pts thof, from time to time in the pchase of furniture, plate, or other househd effects of a suitable character & description, or orwise, as the sd B. shl direct, or shl pay such sum, or any pt or pts thof, from time to time to the sd B. for the pposes afsd, witht being in any way concerned to see to the applicon thof: AND IT IS HBY AGRD & DECLD that an inventory shl be made of all such furniture, articles, & effects, as may be pchased, whether by the sd trees or tree or by the sd B. as last afsd, & that the same furniture, articles, & effects, & also the sd sum of £1,000, or so much thof as shl not have been applied for such ppose, until the same shl be so applied, shl be held by the trees or tree in trust for or belong to the sd B. absolutely for her septe use: PROVD ALWAYS, & it is hby agrd that the sd trees or tree shl not be bound or concerned to make any such inventory as afsd, or to interfere with the custody or care of the sd furniture & effects hby assned, or wch may be pchased as afsd, unless reqted in writg so to do by the sd B., & shl not be under any liability in respt of the custody, insurce, or preservon thof. *Power to trees to settle questions, &c.*, p. 515; *Tree clauses*, pp. 519, 521, *forms* XC. *&* XCV.; *Power to trees to employ agents, &c.*, p. 521. IN WITS, &c.

[*Schdle of Furniture.*]

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further assurance would apply in this case (above, p. 455 note), it is not considered necessary, in a settlement of furniture only, to nsert an express covenant.

XIII.

SETTLEMENT, *on Marriage, of* Furniture, *giving the* Wife *an absolute power of* Disposition, *and subject thereto* In Trust *for* Her *for* Life, *with remainder to the* Survivor *of herself and Husband.*

Prec. XIII

Parties, A., *husbd*, 1; B., *wife*, 2; C. & D., *trees*, 3. WITNETH that in conson of a marre intd shortly to be solemnized betn the sd A. & B., the sd B., **as settlor**, with the approbon of the sd A., doth hby assn unto the sd C. & D., All & singr the furniture, plate, linen, china, glass, & other articles of househd or domestic use or ornamt now belongg to the sd B., the parlars whof are specified in the schdle hto, [And all other househd effects wch shl at any time durg the sd intd coverture be acquired by the sd B.] (*a*), Upon trust for her, the sd B., until the sd marre, & after the solemnon thof Upon trust to dispose of & deal with the same in such mner as the sd B. shl by any writg under her hand (*b*), or will or codl, direct, And in default of & subjt to any such diron, Upon trust to allow the sd B. to use & enjoy the same durg the jt lives of herself & the sd A., And after the death of such one of them the sd A. & B., as shl first die, upon trust for the survor of them, the sd A. & B., for his or her absolute benefit: Provd always, & it is hby agrd & decld, that the sd trees or tree shl not be bound to see to the preservon of, or be ansble for the loss or destron of the sd effects & premes, or any pt thof. In wits, &c.

Witnesseth.

Assignment of furniture

and after-acquired furniture

as wife shall appoint.

In default upon trust to allow wife to use during joint lives of husband and wife.

Remainder to survivor of husband and wife.

Trustees' indemnity.

[*Schdle of Furniture.*]

(*a*) This confers on the trustees only an equitable title to the after-acquired furniture, which is liable to be defeated by persons taking a legal title under the wife, by bill of sale or otherwise, after she has acquired the furniture, and without notice of the settlement, see *Joseph* v. *Lyons*, 15 Q. B. D. 280; *Hallas* v. *Robinson*, *ib.*, 288. See also as to settlements of furniture, the note to the last Precedent.

As to settlements of after-acquired furniture.

(*b*) If followed by a trust for the separate use of the wife absolutely, this provision as to direction in writing, &c., would be nugatory. The form in the text would extend to an imperfectly executed will; see *Farington* v. *Parker*, L. R. 4 Eq. 116.

As to direction in writing.

XIV.

PREC. XIV.

SETTLEMENT, *on Marriage, of* DIAMONDS *upon the Wife for her inalienable use.*

Recitals.

Witnesseth.

Trusts.

Power to reset diamonds.

Provision in case of loss.

Power to trustees to interfere.

Parties, A., *husbd,* 1; B., *wife,* 2; C., D., & E., *trees,* 3. *Recite intd marre,* p. 450: AND WHAS the sd B. is absolutely entled to the diamonds & the settgs thof, the parlars whof are specified in the schdle hto, AND upon the treaty for the sd intd marre it was agrd that the sd B. shd assn the same to the sd C., D., & E., upon the trusts hinafter decld concerng the same: NOW THIS INDRE, &c., *Assnmt by B. with approbon of A. of diamonds & settgs, referrg to schdle, to trees,* p. 455, *form* I., p. 457, *note* (*a*): AND IT IS HBY AGRD & DECLD that the sd C., D., & E., & the survors & survor of them, or other the trees or tree for the time being of these psnts (hinafter called the sd trees or tree), shl, after the solemnon of the sd intd marre, allow the sd B. to have the psonal use & enjoymt of the sd diamonds & settgs durg her life as her septe ppty, but so that durg her now intd or any future coverture, she shl not be able to sell, dispose of, or chge the same, or her life intt thrin, & after the death of the sd B. shl stand possed of the same UPON TRUST, &c., *ulterior trusts*: PROVD ALWAYS, & it is hby agrd that the sd B. may from time to time have the sd diamonds reset, but not so as to diminish the intrinsic value of the settgs thof, & that neir the sd B. nor the sd trees or tree shl be liable for the loss or destron of the sd diamonds & settgs, or any of them, & that the sd trees or tree shl not be bound to interfere as to, or to see to, the safe custody of the sd diamonds & settgs: PROVD ALSO that it shl be lful for the sd trees or tree, or any agent authorised by them or him, at the reqt of any pson intted, or witht any such reqt, if in their or his discron they or he shl think it necy for the safe preservon of the sd diamonds & settgs, at any time or times to take posson of the same, & to retain such posson durg such period as they or he shl think fit; *Clause as to apptmt of new trees,* p. 519. IN WITS, &c.

[*Schdle.*]

(*a*) As to covenant for further assurance, see above, p. 455, note.

XV.

DEED *of* CONFIRMATION *by the* Wife *on* Attaining Twenty-one, *of a* Settlement *made during her* Infancy (*b*).

PREC. XV.

Recitals.

Parties, A., *wife*, 1; B., *husbd*, 2; C., D., & E., *trees*, 3. Whas these psnts are intd to be read as supplemtal to an indre dated, &c., & made, &c., being the settlemt exted in contemplon & conson of the marre then intd & shortly aftwds solemnized of the sd B. & A.; And whas the sd A. attned the age of twenty-one yrs on the —— day of ——; And whas the sd A. has agrd with the sd B. to confirm the sd settlemt in mner hinafter appearg. NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of [the provons made by the sd B., *or, as the case may be,* in favour of the sd A. by the sd settlemt, & of] the premes the sd A. with the approbon of the sd B. doth hby confirm the sd settlemt to the intent that the same shl take effect in the same mner in all respts as if the sd A. had at the date thof been of full age; AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the conson afsd, the sd A., as

Witnesseth.

Confirmation of settlement.

Further witnesseth.

As to confirmation of infant's settlement.

(*b*) See p. 536, note. A mere confirmation without a formal assignment is sufficient as to any merely equitable interest, or any chattels personal assigned by the settlement, or expressed so to be; but any legal estate in real or leasehold property should be formally conveyed.

As to Infants' Relief Act, 1874.

Any such question as was raised in *Greenhill* v. *North British, &c., Co.*, [1893] 3 Ch. 474, and other cases there referred to, commented on in *Harle* v. *Jarman*, [1895] 2 Ch. at p. 428, as to the capacity of the wife by reason of the disabilities of coverture to confirm the settlement, is not now likely to arise. A settlement or agreement for a settlement by an infant is not affected by s. 1 of the Infants' Relief Act, 1874 (37 & 38 Vict. c. 62), avoiding certain contracts made by infants; *Duncan* v. *Dixon*, 44 Ch. D. 211; and s. 2 of the Act, which provides that no action shall be brought upon any ratification made (with or without consideration) after full age of a contract made during infancy, does not apply to a contract which is for the benefit of the infant (as a marriage settlement would usually be), since such a contract, being voidable only, does not need ratification, and the confirmation of the settlement merely bars the right of repudiation; see *Duncan* v. *Dixon*, *ubi supra; Edwards* v. *Carter*, [1893] A. C. 360; *Re Hodson*, [1894] 2 Ch. 421.

Stamp.

It seems clear that such a deed of confirmation (whether for valuable consideration or not), of a settlement of personalty, as it does not, for the reason just stated, operate as a settlement, but only by relation back to the marriage settlement, requires, if the settlement was stamped with the *ad valorem* duty, only a 10*s*. stamp.

PREC. XV.

Grant of freeholds.

settlor, with the approbon of the sd B., doth hby grt unto the sd C., D., & E., *freehd pcels, see Vol. I.*, p. 385. TO HOLD the same UNTO & TO THE USE of the sd C., D., & E., their hrs & assns, UPON THE TRUSTS & subjt to the powers & provons hinafter decld & contd of & concerng the same; *Further testatum, assnmt of leasehds by A. to the trees, & habendum, see* p. 544. UPON THE TRUSTS, &c., *as above.* AND IT IS HBY agrd & decld that the sd C., D., & E., & the survors & survor of them or other the trees or tree for the time being of the sd indre of settlemt shl stand seised & possed of the sd freehd & leasehd hds & premes hby grted & assned resply, & of the [one eql fourth pt or share &] premes by the sd settlemt expd to be assned by the sd A. to the sd C., D., & E., & all moys, stks, funds, shares, ppty, & premes whatsr by the sd settlemt expd or intd to be settled by or on the pt of the sd A., upon, & subjt to such trusts, powers, & provons as are in & by the sd settlemt decld & expd concerng the same resply, so far as the same are capable of taking effect. IN WITS, &c. (*a*).

Assignment of leaseholds.

XVI.

PREC. XVI.

ARTICLES *under seal for a* SETTLEMENT *on* MARRIAGE (*b*).

PARTIES, A., *husbd*, 1; B., *wife*, 2; C. & D., *trees* (hinafter called the trees), 3. WITNETH that in conson of a marre

Witnesseth.

(*a*) Notice of this deed must be given to the trustees of any prior settlement or will under which the wife takes an equitable interest comprised in her settlement.

As to articles for a settlement.

(*b*) It is always desirable to avoid if possible an agreement or articles for a settlement, and to have an actual settlement if circumstances admit. This Precedent is intended for a case in which there is no time for settling the details of and preparing a formal settlement, the proposals or rough heads being given in a schedule. As to settlements made in pursuance of articles, see 3 Dav. Prec. 663; 2 W. & T. Lead. Cas. Eq., notes to *Lord Glenorchy* v. *Bosville;* as to the construction of marriage articles, see Seton on Decrees; Elph. N. & C. Interpretation, 533 *et seq.;* Vaizey on Settlements, p. 140; as to rectifying settlements not in accordance with the articles, see Seton; Vaizey, 1563. As to the *ad valorem* stamp on articles for a settlement, see the Stamp Act, 1891, schedule, tit. "Settlement;" and the stamp on a settlement made in pursuance of articles should be adjudicated, see s. 106.

wch is intd forthwith to be solemnised betn the sd A. & B., it is hby agrd as follows: that is to say,

Agreement for settlement.

1. A settlemt of the real & psonal ppty comprd & descd in the schdle hto shl as soon as may be after the sd intd marre be prepared by the trees in accdce with the provons expd in the sd schdle.

Power to modify.

2. Provd always that the trees shl have full power with the consent in writg of the sd A. & B. or the survor of them (*c*) in case the sd settlemt shl be exted within one yr after the date of these psnts, but not orwise, to modify or depart from the provons expd in the sd schdle in any mner & to any extent eir as regards the ppty to be comprd in the settlemt or the mode or form of settlemt or orwise as may be deemed necy or desirable, & to insert such other or addonal or extended powers & provons as may be thought pper, the intention of the pties hto being that the sd settlemt when exted by the trees with

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As to appointment of attorney in case of absence of parties.

(*c*) If the parties are going abroad after the marriage it would be better that each should appoint some other person to act on his or her behalf in settling the terms of the settlement; and it is also desirable that each should give a power of attorney to execute the settlement and any necessary conveyances, &c.

As to the power of a married woman to appoint an attorney.

At Common Law a married woman could not give a power of attorney, except, perhaps, with the consent of her husband; see Vol. I., p. 182, note; and a power given by an unmarried woman was in general revoked by her marriage; but by the C. A., 1881, s. 40, a married woman can now appoint an attorney to execute any deed or do any act, which she might herself execute or do; and by the C. A., 1882, s. 9, a power of attorney given (whether for valuable consideration or not) by an unmarried woman, may be made irrevocable for a limited time (not exceeding one year) in favour of purchasers (which includes other persons taking or dealing for value, see s. 1, and would therefore apply to a marriage settlement), so as not to be revoked by the marriage; and this is aided by the M. W. P. A., 1882, removing the disabilities of married women as to property and contracts (see Vol. I., p. 182, note).

The following is a form of clause appointing an attorney so as to be irrevocable (except by deed) under the C. A., 1882, s. 9:—

Appointment of attorney.

"And the sd A. hby appts L., of, &c., to be the atty of him the sd A. in his name or orwise on his behalf to exte the sd intd settlemt & all such assurces, deeds, transfers, & instrumts as afsd, & to exercise all powers & discrons hby given to him, on his behalf, & to act in all respts on behalf & as the repve of him the sd A. in relon to the sd settlemt & premes, & hby declares that the apptmt lastly hinbfe contd shl be irrevocable [for one yr from the date of these psnts] except by an express revocon by deed notified to the sd L."

The appointment of an attorney by B. would be in the same form.

PREC. XVI.

the concurrce of the sd A. & B. or the survor of them shl not be liable to be questioned or in any mner objected to by reason of any want of conformity to these psnts or orwise.

Agreement to execute settlement, &c.

3. The sd A. & B. & their respive hrs, exs, & ads shl, when required by the trees, & the trees shl also exte such settlemt & shl also exte & do all such convces, assurces, deeds, transfers. instrumts, & acts as may be necy or pper in order fully to effectuate the sd settlemt.

Declaration of trust.

4. Until the sd settlemt, assurces, deeds, instrumts, & acts, shl have been exted & done as afsd the sevl psons in whom the ppty comprd & descd in the sd schdle hto is now vested resply, & their respive hrs, exs, & ads, shl stand [seised &] possed of & intted in the same upon the trusts & subjt to the powers & provons in the sd schdle hto expd or implied in relon thto resply.

Interpretation of "trustees."

5. The expression "the trees" as hinbfe used shl include the sd C. & D. & the survor of them & the exs or ads of such survor or other the trees or tree for the time being of these psnts.

As to appointment of new trustees.

6. The power of apptg new trees of these psnts shl be vested in the sd A. & B. durg their jt lives & the survor of them durg his or her life.

Costs (*a*).

7. The costs of & incidental to the negotion, preparon, engrossmt, & exon by all pties of these psnts & of the settlemt, assurces, deeds, & instrumts, afsd, & of doing any other acts for effectuatg the sd settlemt shl be pd by the sd A. out of his own moys.

As to settlement superseding articles.

[8. A declon by the trees in the sd settlemt to the effect that the same is intd to carry out or effectuate & to supersede these psnts shl for all pposes & as agst all psons intted be conclusive in that behalf.]

[*Schdle.*]

(*a*) See p. 514, note (*a*).

XVII.

VOLUNTARY SETTLEMENT *of* PERSONALTY *on a Son* (*under age*) *and his issue* (*b*).

Recitals.

Transfer of stock.

PARTIES, A., *settlor*, 1; B. & C., *trees*, 2: WHAS the sd A. has transferred into the jt names of the sd B. & C. the sum of

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Law as to voluntary settlements.

(*b*) As to voluntary settlements generally, see Vaizey on Settlements, pp. 89 *et seq.*, pp. 1526 *et seq.*; 3 Dav. Prec. pp. 675 *et seq.*; Digest to the Law Reports, tit. "Voluntary Conveyance," and "Gift;" M. L. P. P., c. 6, and for cases where a deed of gift has been held to be a testamentary instrument, see Jarman on Wills, Ch. II.

The following points should especially be remembered, as to such settlements:—

Validity as regards creditors.

1. They may be impeached as made with intent to defeat creditors under 13 Eliz. c. 5; see 1 Smith L. C., notes to *Twyne's Case;* 3 Dav. Prec. 675; *Ex parte Mercer*, 17 Q. B. D. 290; *Godfrey* v. *Poole*, 13 App. Cas. 497.

As to subsequent purchasers for value.

2. Voluntary settlements of land were liable to be defeated by a subsequent disposition for value by the settlor under 27 Eliz. c. 4; see 1 Smith L. C., notes to *Twyne's Case;* 3 Dav. Prec. 682; but this has now been altered by the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), which protects settlements made *bonâ fide* and without fraud from being so defeated.

Consideration.

3. A small *bonâ fide* consideration is sufficient to support them against creditors, *Re Johnson*, 20 Ch. D. 389, and was sufficient to support them against a disposition for value by the settlor, *Townend* v. *Toker*, L. R. 1 Ch. 446; *Bayspoole* v. *Collins*, L. R. 6 Ch. 228.

As to bankruptcy.

4. As to any property, they may be defeated under the Bankruptcy Act, 1883, s. 47, by the subsequent bankruptcy of the settlor within two years of the date of the settlement; or at any time afterwards within ten years from that date unless it can be proved that the settlement did not leave him insolvent: see *Ex parte Hillman*, 10 Ch. D. 622; *Ex parte Todd*, 19 Q. B. D. 186; *Hance* v. *Harding*, 20 Q. B. D. 732; *Harris* v. *Tubb*, 42 Ch. D. 79; *Mackintosh* v. *Pogose*, [1895] 1 Ch. 505. But a *bonâ fide* purchase from the donee under the voluntary settlement made before the act of bankruptcy to which the title of the trustee in bankruptcy relates back is good as against the trustee, *Re Carter and Kenderdine*, (1897) 1 Ch. 776.

As to incomplete settlements.

5. They are not binding on the settlor until completed by actual transfer of the property so far as it is transferable, or by a valid declaration of trust on his part, see notes to *Ellison* v. *Ellison*, 2 W. & T. Lead. Cas Eq.; 3 Dav. Prec. p. 686; *Re Patrick*, [1891] 1 Ch. 82.

As to undue influence, &c.

6. They are more liable than settlements for value to be set aside on the ground of undue influence or want of understanding of their effect; and where the settlement is to be irrevocable, and especially where the settlor has recently come of age, considerable care is often necessary as to the form which it should take; see *Everitt* v. *Everitt*, L. R. 10 Eq. 405; *Prideaux* v. *Lonsdale*, 4 Giff. 159; 1 De G. J. & S. 433: *Phillips* v. *Mullings*, L. R. 7 Ch. Ap. 244; *Dutton* v. *Thompson*, 23 Ch. D. 278; *James* v. *Couchman*, 29 Ch. D. 212; which show the proper frame of a settlement made for the settlor's own protection against improvidence.

Settlement to be irrevocable.

Witnesseth.

Declaration of trust.

Investment.

Trusts during life of father; after his death, maintenance of son.

£—— 2¾ p.c. Consold stk, to the intent that the same shl be held upon the trusts & with & subjt to the powers & provons hinafter decld & expd: [AND to the intent that the settlemt hby made shl be irrevocable:] NOW THIS INDRE WITNETH that in conson of the natural love & affon of the sd A. for his son D., & for divers other good causes & consons, the sd A. (*a*) doth hby declare that the sd B. & C., & the survor of them, & the exs or ads of such survor, or other the trees or tree for the time being of these psnts (hinafter called the sd trees or tree) shl eir permit the sd sum of £—— 2¾ p.c. Consold Stk to remain in its actual state of investmt or, with the consent of the sd A. durg his life, & after his death, with the consent of the sd D., if he shl be livg & shl have attned the age of twenty-one yrs, & at all other times at the discron of the sd trees or tree, sell the same or any pt or pts thof, & invest the proceeds of such sale in the names or name [or under the legal control] of the sd trees or tree in or upon, *Investmts*, pp. 458 to 463, *forms* III. to VIII., *power to vary investmts*, p. 464: AND SHL (*b*) pay the income of the sd sum of £—— —— Stk & the investmts from time to time representg the same, to the sd A. durg his life, AND AFTER his death, in case the sd D. shl be under the age of twenty-one yrs, the sd trees or tree shl durg his minority apply the whole or such pt

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As to reserving power of revocation.

7. A power of revocation, though tending to disprove undue influence, &c., has been considered a "badge of fraud" under 13 Eliz. c. 5, and could be exercised in favour of the creditors by the trustee in bankruptcy of the settlor under the Bankruptcy Act, 1883, s. 44 (see 3 Dav. Prec. p. 679). Care must always be taken to ascertain the settlor's wishes as to the insertion or not of a power of revocation; see 3 Dav. Prec., p. 695 *et seq.* In the absence of such a power (if intentionally omitted), the settlor will be irrevocably bound as soon as the transfer of the property is complete; see also *Hall* v. *Hall*, L. R. 8 Ch. 430; *Welman* v. *Welman*, 15 Ch. D. 570.

(*a*) As to covenants for title, see pp. 455, 456, note.

As to inserting trust for payment of settlor's debts.

(*b*) In order to make the settlement as far as possible unimpeachable by creditors under the Bankruptcy Act, 1883, s. 47, or otherwise (see p. 561, note), it is suggested that the first trust might be for payment of any debts owing by the settlor at the date of the deed which may not be otherwise discharged by him in his lifetime or by his estate after his death; as to the effect of this, see *Godfrey* v. *Poole*, 13 App. Cas. 497. Until the deed has been communicated to a creditor the settlor can revoke the trusts for creditors, *Garrard* v. *Lauderdale*, 2 R. & My. 450; *Johns* v. *James*, 8 Ch. D. 744; *Re Ashby*, (1892) 1 Q. B. 872; unless it be for the benefit of named creditors, *New Prance and Garrard's Trustee* v. *Hunting*, (1897) 2 Q. B. 19; but on his death it becomes irrevocable, *Synnot* v. *Simpson*, 5 H. L. C. 121; *Priestly* v. *Ellis*, (1897) 1 Ch. 489.

as they or he shl think fit of the income of the sd trust premes for or towards the mtce or educon of the sd D., & may eir themselves or himself so apply the same, or may pay the same to the gdian or gdians of the sd D. witht seeing to the applicon thof: AND SHL durg such period as last afsd accumulate the residue (if any) of the same income in the way of compound intt by investg the same, and the resultg income thof in or upon any such investmts as are hinbfe authorised; AND SHL stand possed of such accumulons, & of the investmts thof, & the income thof, upon the same trusts, & with & subjt to the same powers & provons as are hinafter decld & expd concerng the origl trust fund, & the income thof: AND AFTER the death of the sd A., & the majority of the sd D., the sd trees or tree shl pay the income of the sd trust premes to the sd D. & his assns durg his life (*c*), AND AFTER his death shl stand possed of the same trust premes, and the income thof, IN TRUST for all or such one or more exclusively of the others or other of the chln, or remoter issue of the sd D. (such remoter issue to be born, & take vested intts within twenty-one yrs from the death of the sd D.) at such age or time or respive, &c., *remr of trust for issue as D. shl by deed or will appt*, p. 474, *mutatis mutandis, saying*, "advancemt eir after the death of the survor of the sd A. & D., &c.;" *Trust for chln in default of apptmt*, p. 476, *form* XXXIII., *mutatis mutandis: Hotchpot clause*, p. 477, *mutatis mutandis* (*d*): *Power of advancemt of son's chln exercisable after death of A. & D., or in their or his lifetime, with their or his consent in writg*, p. 480.

Accumulation.

After majority of son.

After death of son.

Power of appointment among son's issue.

(*c*) It would sometimes be proper to insert a power of advancing the son out of the capital.

Suggested variation.

(*d*) If desired, insert the following proviso:—

"PROVD ALSO that in the event of the sd D. havg issue by more than one marre the power of appointmt among his issue hinbfe contd shl not be exercised so as to give to or among his issue by a first or prior marre collectively, a larger proportion of the sd trust premes, than such issue wd have taken in the event of no apptmt being made under the sd power of apptmt, & the whole of the sd trust premes becomg divisible psuant to the trust hinbfe contd in default of apptmt, but so that this provo shl not restrict the power of advancemt hinafter contd, or affect any advancemt made thrunder.

Provision as to the issue of a second marriage.

PREC. XVII.

Power to D. to appt life intt to a wife survivg him, p. 513, *form* LXXXI., *mutatis mutandis: Ultimate trust in default of chln attaing a vested intt for A.*, p. 481, *form* XLIII., *mutatis mutandis: Clauses as to apptmt & indemnity of trees*, p. 519, *form* XC., *&* p. 521, *form* XCV.*: Power to trees to employ agents, &c.*, p. 521, *form* XCVI. [*Power of revocon, absolute or restricted*, p. 522] (*a*). IN WITS, &c.

XVIII.

PREC. XVIII.

DEED *of gift of* FURNITURE, *&c.*, *by* HUSBAND *to* WIFE (*b*).

Recitals.

TO ALL to whom these psnts shl come, A., of, &c., sends greetg. WHAS no settlemt was made upon the marre of the sd A. with B. his wife for her benefit or orwise. AND WHAS the sd A. is desirous of makg such gift or disposon in favour

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(*a*) As to the costs of trustees where a settlement is set aside, see *Re Holden*, 20 Q. B. D. 43.

As to voluntary gift of chattels.

(*b*) A voluntary assignment of chattels by deed is of course effectual without delivery; but a mere letter or other parol gift without delivery cannot operate at law, and to be effectual in equity must take the form of a declaration of trust; see Goodeve, P. P., pp. 47, 87; *Re Breton*, 17 Ch. D. 416.

As to gift by husband to wife.

As it is doubtful whether the common law doctrine as to the unity of person of husband and wife is abrogated by the M. W. P. A., 1882, so as to make it competent for the husband at law to make a direct gift of this kind to the wife (see Vol. I., p. 613, note); and inasmuch also as an assignment of *after-acquired* chattels is void at law (see *Lunn* v. *Thornton*, 1 C. B. 379), the assignment in this Precedent is supplemented by a declaration of trust. It would perhaps be better that the deed should take the form of a mere declaration of trust without an assignment.

Validity as against creditors.

The gift, not being a security for money, is outside the Bills of Sale Act, 1882, but within the Act of 1878, if the apparent possession remains in the husband. Probably the possession in the case in the text of the things in the dwelling-house, but not in the office, is in the wife, as it is her duty to live with her husband, and in that state of things it is impossible to say which of them has possession, and where possession is ambiguous it goes at law with the title; *Ramsay* v. *Margrett*, [1894] 2 Q. B. 18. The fact of its being a bill of sale within the latter Act does not affect its validity as between the parties, but only as to creditors, see *Davis* v. *Goodman*, 5 C. P. D. 128. The gift is also liable to be defeated by the husband's bankruptcy within two years; *Re Vansittart*, [1893] 1 Q. B. 181.

Effect of subsequent bill of sale.

As to the effect of a subsequent bill of sale by the husband in favour of a person without notice of the settlement, see p. 146, note.

Alternative form.

An alternative form of gift would be to the wife during the joint lives, with remainder to her absolutely if she should be the survivor, but not otherwise.

Witnesseth.

Assignment of existing and future furniture, &c.

Habendum to wife absolutely.

Declaration of trust.

Proviso.

of his sd wife as is hinafter contd. NOW THESE PSNTS WITS that in conson of natural love & affon, & for divers other good causes & consons, the sd A. doth hby absolutely give & make over unto the sd B. ALL & SINGR the furniture, plate, linen, china, glass, pictures, prints, books, musical instrumts, & househd effects, & all jewels, trinkets, & watches, & all other articles & effects of domestic office or psonal use or ornamt, & moveable effects whatsr, [& whether] in his dwg-house [or office or place of business or elsewhere] (inclusive of wines & consumable stores & provons, but exclusive of moy & secs for moy, lres, manuscripts, business books & accts) of or to wch resply he, the sd A., is now possed or entled, or shl or may at any time hrafter durg the jt lives of himself & the sd B. become possed or entled, whether by gift or pchase or any other mode of acquison whatsr, includg his intt in any articles or effects of any such nature as afsd, wch may in law be the jt ppty of him & his sd wife, TO HOLD the same unto the sd B. for her own absolute use & benefit & as her septe este & ppty, free from the control, interferce, & engagemts of the sd A. AND in order to give full effect to the gift or disposon hinbfe contd in case & so far as the same may not in law be capable of operatg accdg to its tenor, the sd A. doth hby declare that he & his exs & ads will stand possed of all the articles & effects hinbfe-mentd, IN TRUST for the sd B. for her absolute use & benefit, & as her septe este & ppty as afsd. PROVD ALWAYS that the sd A. shl not be ansble for the loss or destron of or any damage wch may happen to any of the sd articles & effects. IN WITS, &c.

XIX.

PREC. XIX.

DECLARATION *of Trust of* SUM ADDED *to Settlement* (*by* ENDORSEMENT) (*c*).

THIS INDRE made, &c., BETN the within-named A., of the one pt, & the within-named B., C., & D., *trees*, of the

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As to added funds.

(*c*) As to the importance in making an appointment under the powers in a settlement of referring specifically to a fund added to the settlement fund, see

PREC. XIX.

Recitals.

Transfer of stock.

Witnesseth.

other pt: WHAS the sum of £——2¾ p. c. Consold Stk has been transferred by the sd A. to the sd B., C., & D., to the intent that the same shl be held upon the trusts hinafter decld concerng the same: NOW THIS INDRE WITNETH that it is hby agrd & decld that the sd B., C., & D., & the survors & survor of them, or other the trees or tree for the time being of the within-written indre shl stand possed of the sd sum of £—— 2¾ p. c. Consold Stk, & the stks, funds, & secs wch may from time to time represent the same, & the income thof, UPON SUCH TRUSTS, & subjt to such powers & provons as are in & by the within-written indre decld & contd of or concerng the [within-mentd sum of £—— 2¾ p. c. Consold Stk, & the stks, funds, & secs wch may from time to time represent the same,] wife's fortune & the income thof, or such of the same trusts, powers, & provons as may be subsistg or capable of takg effect, but not so as to increase or multiply chges, or powers of chging, to the intent that the fund hby settled shl be consold with, & form one fund with the [trust premes comprd in, or now subjt to the trusts of the within-written indre] wife's fortune for all pposes, includg (so far as the sd A. can effect that object) the operon & effect of the hotchpot clause in the within-written indre contd. IN WITS, &c. (a).

Re Curteis' Trusts, L. R. 14 Eq. 217; and generally as to added funds, Vaizey on Settlements, p. 326.

Stamp.

Short form.

(a) The following is a short form of a memorandum, not under seal, for the same purpose, which would ordinarily suffice. This document, as well as that in the text, would require an *ad valorem* stamp as a "settlement" on the value of the stock added to the settlement. "Mem,—I, the within-named A., hby declare that the sum of £—— —— stk was on the —— day of —— transferred by me into the names of the trees of the within-written indre, to the intent that the same shd form an addon to the trust funds thby settled, & shd be thenceforth held upon the trusts wch wd have been applicable thto if the same had formed pt of the sum of £—— —— stk origlly settled thby. AS WITS my hand this —— day of ——."

XX.

DEED *under Power of Appointment* WITHDRAWING FREEHOLDS *settled by Trust for Sale from* SETTLEMENT.

PREC. XX.

Parties. *Parties*, A., *tenant for life*, 1; B., *tree*, 2. *Recite settlemt* Recitals. *by way of trust for sale under wch A. is tenant for life with remr upon such trusts as he may appt by deed or will subjt to a mtge & that the mtge has become vested by transfer in A.:* Desire. AND WHAS the sd A. is desirous of withdrawg the hds & premes comprd in the sd indre of settlemt from the settlemt thby made &, in order to effectuate that object, of exercisg the power of appmt given to him by the sd settlemt as afsd in mner hinafter exprd, & he is desirous that the sd hds & premes shl be assured to & vested in him dischged from the trusts & provons of the sd settlemt in mner hinafter appearg. Witnesseth. NOW THIS INDRE WITNETH that in psuance of such desire as afsd & in exercise of the power for this ppose given to him by the sd indre of settlemt & of every, &c., he the sd A. doth hby appt & direct that all & singr the hds & premes Appointment. comprd in & settled by the sd indre of settlemt & all other (if any) hds wch are now by any means subjt to the trusts of the sd settlemt & the rents & profits thof shl from & after the death of him the sd A. & subjt to his life intt thrin under the sd settlemt be held in trust for him the sd A., his hrs & assns absolutely dischged from the trust for sale contd in the sd indre of settlemt as afsd to the intent that he the sd A. shl henceforth become & be absolutely entled benefly in fee simple in posson to the sd hds & premes & that the same hds & premes shl be absolutely withdrawn from the operon of the sd settlemt. Direction. AND the sd A. doth hby direct that the sd hds & premes shl accdly be conveyed by the sd B. to him the sd A. dischged from the sd settlemt in mner hinafter exprd. Further witnesseth. AND THIS INDRE ALSO WITNETH that in psuance of the diron lastly hinbfe contd & in conson Conveyance. of the premes the sd B. as tree doth hby grt & convey unto the sd A. All & singr the sd hds & premes comprd in or exprd to be conveyed or assured by the sd indre of settlemt & all other (if any) hds wch are now by any means vested in him the sd B. as survivg tree of the sd indre of settlemt upon

PREC. XX. the trusts thof, To hold the same unto & to the use of the sd A. his hrs & assns dischged from the sd settlemt & all the trusts & provons thrin contd, And the sd A. doth hby declare that the sd mtge debt of £—— secd by the sd indre of, &c., shl merge & become extinguished in the freehd & inhance of the sd hds & premes. IN WITS, &c.

XXI.

PREC. XXI.

DEED *Endorsed on Settlement* ENLARGING *range of* INVESTMENT.

Parties. *PARTIES*, A. & B., his wife, C. & D., *beneficiaries*, 1; *trees*, 2.

Recitals. RECITALS *showing that the fund is settled in trust for A. for life, remr to B. for life for her septe use witht anticipon, remr to C. & D., their only chln, who are of age, in eql shares, subjt to the usual power of apptmt vested in the parents & the survor.* AND WHAS the pties hto of the 1st pt are resply desirous that the range of investmt authorized by the within-written indre with respt to the trust funds thrin comprd shl durg the lives & life of the sd A. & B. & the survor of them be enlarged & extended in mner hinafter expd. NOW THIS

Witnesseth. Declaration enlarging range of investment. INDRE WITNETH that it is hby agrd & decld that the range of investmt authorized by the within-written indre in respt of the trust funds & premes thrin comprd or now or hrafter subjt to the trusts thof whether representg the funds thby brought into settlemt by or on the pt of the sd A. or the sd B. or orwise shl henceforth be enlarged & extended in mner hinafter expd (that is to say) that it shl be lful for the sd, *trees*, & the survor of them or other the trees or tree for the time being of the within-written indre from time to time, or at any time hrafter durg the lives & life & with the consent in writg of the sd A. & B., or the survor of them from time to time to vary or transpose the investmt of the sd trust funds & premes or any pt thof resply into or for any such stks, funds, shares, or secs as are hinafter mentd, whether the same are authorized as investmts by the within-written indre or orwise by law or not (that is to say), *Investmts* (*see above*, pp. 458—463), *forms* III. *to* VIII., *& power* *to vary investmts*, p. 464, *mutatis mutandis*, & that the sd trees or tree shl not be in anywise responsible or liable for any loss arisg from any such investmt or transposon of investmt as afsd. AND THE sd pties hto of the 1st pt do hby jtly & sevlly covt with the sd, *trees*, resply & their respive exs & ads, & with all & every future trees or tree of the within-written indre that they, the respive covtg pties & their respive hrs, exs & ads, will at all times hrafter keep the sd existg & future trees of the within-written indre & their respive hrs, exs & ads, estes & effects indemnified & saved harmless from & agst all claims, demands, actions, suits, pcdgs, liability, costs, damages & expses by reason or in respt of any such investmt or transposon of investmt as afsd or the retention of any such investmt. AND the sd A. doth hby chge all his psnt & future life este & intt in the sd trust funds & premes, AND THE SD C. & D. do resply hby chge all their respive revy shares, estes & intts whether under any apptmt or in default of apptmt in the same trust funds & premes with the indemnity of the sd psnt & future trees or tree resply & their or his respive hrs, exs & ads, estes & effects, in respt of the mres afsd & with the paymt of any sum or sums wch may become payable to them or any of them resply in respt of such indemnity under the covt hinbfe cont. IN WITS, &c.

Covenant of indemnity.

Charge.

SETTLEMENTS (REAL).

PRELIMINARY NOTE ON SETTLED LAND ACTS.

As to settlements of real estate, see Davidson, Prec., vol. iii.; Elph. Introd. Conv., p. 359; Vaizey on Settlements; and for a short reference to the recent legislation affecting settlements, see p. 448, note.

Provisions of S. L. Acts, 1882 to 1890.

The provisions of the S. L. A., 1882 (45 & 46 Vict. c. 38), and the amending Acts of 1884 (47 & 48 Vict. c. 18); 1887 (50 & 51 Vict. c. 30); 1889 (52 & 53 Vict. c. 36); and 1890 (53 & 54 Vict. c. 69), as they affect the frame of settlements, have been discussed in the note to Vol. I., pp. 467, 476, but the following points also require attention:—

Powers of tenant for life.

The tenant for life is invested with very large powers for the following purposes:—1, of selling the settled land or any easement, right, or privilege over or in relation to the same, Act of 1882 (s. 3, i.); 2, of enfranchising freehold or copyhold land held of a settled manor (s. 3, ii.); 3, of exchange (s. 3, iii.); 4, of partition (s. 3, iv., and as to the creation of easements, &c., on an exchange or partition, see Act of 1890, s. 5), (see also as to these powers, ss. 4, 5, 17); 5, of making leases or grants for any term not exceeding for a building lease ninety-nine years, *Re Daniell*, [1894] 3 Ch. 503, for a mining lease sixty years, and for any other lease twenty-one years (s. 6); and with power to insert an option of purchase in a building lease (Act of 1889), (see also as to these powers, ss. 7, 8, 9, 11, 12, 17; and the Act of 1884, s. 4, and as to mining leases the Act of 1890, s. 8); 6, under an order of the Court, but not otherwise, of making leases or grants for building or mining purposes, for longer terms, or in perpetuity (s. 10); 7, of accepting surrenders of leases (s. 13); 8, of granting licenses to copyholders to lease their tenements (s. 14); 9, of appropriating and laying out land for streets, open spaces, &c. (s. 16); 10, of raising by mortgage money required for enfranchisement, or equality of exchange, or partition (s. 18); or for discharging an incumbrance on the settled land (Act of 1890, s. 11); 11, of executing improvements, subject to the approval of the trustees or the Court, and to the restrictions as to obtaining a certificate of the Board of Agriculture, or an engineer, or surveyor, or otherwise (ss. 25-29, and Act of 1890, ss. 13 and 15).

See further as to the details of the above powers, the notes, *infra*.

As to timber and heirlooms.

Power is also given to a tenant for life, impeachable for waste, to cut and sell timber with the consent of trustees or the Court, three-fourths of the proceeds being applicable as capital (s. 35); and of selling heirlooms with the sanction of the Court (s. 37), see *infra*, p. 653, note.

Capital money to devolve as land.

Although by s. 21, capital money arising under the Act is liable to be reinvested alternatively in the purchase of land or in other investments constituting personal estate, it is provided by s. 22 (5), that the money and investments are to devolve as land in the same manner as the land from which the money arises would have devolved; this statutory re-conversion into realty being similar in effect to the constructive re-conversion resulting from the direction in an ordinary settlement for re-investment of sale moneys in the purchase of land with powers of interim investment; see *Re Bird*, [1892] 1 Ch. 279. (In the case of settlements by way of trust for sale the converse is provided; s. 63, sub-s. 2, iii.) It is doubtful whether money made applicable as if it were capital money of the settlement for the purposes of the S. L. A. or otherwise, becomes equitably converted into real estate for the purpose of transmission or devolution unless some words are added to the effect that "& so that the same shl be deemed to be impressed with a trust for the investmt thof in the pchase of freehd hds to be settled to the uses & upon the trusts to & upon wch the freehd hds hby settled may be subjt & for the interim investmt & applicon thof in any other mnr in wch capl moy arising hrunder is hby or by the Settled Land Acts, 1882 to 1890, authorized to be invested;" see W. B. & C., pp. 328-9.

Extension of powers of investment in settlement.

By s. 33, where under a settlement money is in the hands of trustees and is liable to be laid out in the purchase of land, the trustees, in addition to any other powers of investment given by the settlement, may, at the option of the tenant for life, invest or apply it as capital money under the Act. This applies to a settlement of money in trust for the purchase of land, *Re Mackenzie*, 23 Ch. D. 750; *Re Tennant*, 40 Ch. D. 594; *Re Mundy*, [1891] 1 Ch. 399.

Special provision is made by s. 34 for the equitable application of the purchase-money on the sale of a lease or an estate subject to a beneficial lease.

As to appointing trustees by the settlement.

If the trustees of the settlement are invested with an express power of sale, whether immediate or deferred, the statutory definitions of the "trustees," which cannot be superseded, should be carefully borne in mind.

Receipt of trustees.

The Act of 1882 makes the receipt of the trustees an effectual discharge (s. 40, which applies to trustees appointed by the Court, *Cookes* v. *Cookes*, 34 Ch. D. 498), and contains full provisions for the protection and reimbursement of the trustees, and for exonerating them from all responsibility for anything done under it, ss. 41 to 43; and a power to the Court to determine matters in difference between the tenant for life and the trustees, s. 44.

Act cannot be excluded.

Sections 51 and 52 of the Act of 1882 contain provisions invalidating any prohibition, clause of forfeiture, or other provision in a settlement purporting or tending to prevent the exercise by a tenant for life of his powers under the Act, which cannot therefore be excluded or controlled by the settlement; see *Re Ames*, [1893] 2 Ch. 479. So a condition imposing residence on the tenant for life does not affect his power of sale under the Act, but remains effectual until the power is exercised; *Re Paget*, 30 Ch. D. 161; *Re Haynes*, 37 Ch. D. 306. Limitations over on bankruptcy, &c., are not affected by these provisions, but the powers of the tenant for life will of course cease on the determination of his estate.

As to conferring additional powers by settlement.

By s. 57, nothing in the Act is to preclude a settlor from conferring on the tenant for life or the trustees any powers additional to or larger than those conferred by the Act; and any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in the Act, operate and be exerciseable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by the Act, unless a contrary intention is expressed in the settlement. Where, therefore, the powers given to the tenant for life are extended by the settlement, the clause extending them will take effect as if it had been contained in the Act, unless the contrary is expressed; but an express declaration that it is intended to operate according to this clause should be added to prevent doubt.

As to extending powers of trustees.

The words of the same section having reference to extended powers given to the *trustees*, must apparently be read in connection with the clauses in the Act giving powers to the trustees (which are few in number, see ss. 22 (2), 26, and the Act of 1890, s. 10), and must have a restricted operation. This provision cannot, as it seems, have reference to the power given to the trustees by s. 60, of exercising the statutory powers on behalf of an infant tenant for life, since in that case they are acting as a tenant for life.

Express powers should usually be omitted.

The powers given by the Act to tenants for life being fully as comprehensive and beneficial, and in many respects much more so than those commonly inserted in settlements, there is in general no advantage whatever in inserting express powers for the like purposes, whether given to the tenant for life or other donee of the statutory powers, or to the trustees or other persons; in which latter case, by s. 56, they could only be exercised with the consent of the donee of the statutory powers; and the proper course, except under very special circumstances, undoubtedly is to omit the powers altogether. There may be cases in which it may be more convenient that sales and other transactions should be effected by the trustees, the tenant for life merely joining as a consenting party, but it is of course to the advantage of the trustees that the statutory powers should be used, as they are in that case relieved by s. 42 of all responsibility.

Express powers, when necessary.

Express powers will be necessary in some cases where the Act does not apply, as to which see Vol. I., p. 469, and are best given by reference to the Act, as in form LXXXII., p. 639.

As to extension of powers so as to override jointures and portions.

The common forms of express powers of leasing, sale, &c., formerly in use were confined in duration to the subsistence of the life estates and the minorities of tenants in tail by purchase, so that on the fee vesting in possession or coalescing with the life estate, the powers were gone, and dispositions overriding any subsisting family charges of jointures and portions could no longer be made; see 3 Dav. Prec., pp. 570 *et seq.*, and notes. This was productive of considerable inconvenience in practice; and a similar difficulty may arise under the S. L. Acts; and it is suggested that the powers might in some cases with advantage be extended by being vested in the trustees in the event supposed during the subsistence of any jointure or of any charge of portions not vested, so as not to be too remote; see *Re Cotton*, 19 Ch. D. 624; though, if the powers are collateral to an estate tail vested in possession, they must as it seems necessarily be destroyed by the entail being barred; see *Waring* v. *Coventry*, 1 My. & K. 249; *Lantsbery* v. *Collier*, 2 K. & J. 709; 32 Sol. J. 689.

As to the frame of a settlement intended to exclude the statutory powers, see below, p. 661, note.

As to extending powers of Act.

More special and elaborate powers than those given by the Act will sometimes be required by the circumstances of the estate or the custom of the district, *e.g.*, a power to grant leases for longer terms, or as to building leases free from the restrictions imposed by s. 8, sub-s. (3) of the Act of 1882; or to make grants in fee on chief rent for building without the sanction of the Court; and other special building estate powers; a more extended power to raise money on mortgage; a power to grant reversionary leases; a power to sell for fee-farm rents; a power to expend money in improvements without the restrictions imposed by the Acts; or an extension of the powers of investment and application of capital money. But any such enlarged powers may probably be in general given by a short clause extending and incorporating the provisions of the Act with the aid of s. 57; see above, p. 571.

Provisions to be inserted with reference to Act.

The following provisions should also usually be inserted with reference to the Acts, if according to the intention—namely, that the mansion-house, &c., may be sold, exchanged, or leased without the consent of the trustees or the Court (see Act of 1890, s. 10); enabling heirlooms to be sold without the sanction of the Court (see s. 37); that the whole of the rent reserved on mining leases shall be treated as income (see s. 11); that the trustees, or, if there is more than one set, the general trustees, shall be trustees for the purposes of the Act (see above); and enabling a sole trustee to act for such purposes (see ss. 39, 40 and 45); and as the requirement in s. 45 as to giving notice of the intention to exercise the statutory powers, even as modified by s. 5 of the Act of 1884, and s. 7 of the Act of 1890, is productive of much inconvenience in practice, and is seldom of any utility, the necessity for this should in general be dispensed with altogether.

Registered land.

The provisions as to registration of settled land are discussed *ante*, Vol. I., pp. 477, 478.

RECITALS.

Short recital of absolute title to freeholds, copyholds, and leaseholds by reference to schedules.

I. WHAS the sd, *settlor*, is seised of the [manors, messes, lands, tithes, &] hds specified in the first schdle hto for an este of inhance in fee simple in posson [subjt to the sevl chges & incumbces hinafter mentd as affectg the same hds, or some pt or pts thof], & of the [messes, lands, &] hds specified in the second schdle hto for an este of inhance to him & his hrs accdg to the customs of the sevl manors of wch the same resply are holden [subjt, &c., *as above*], & is possed of the [messes, lands, &] hds specified in the third schdle hto for the respive residues of the terms grted by the sevl leases specified in such schdle subjt to the rents, covts, & condons reserved by & contd in such respive leases [& subjt, &c., *as above*].

That premises are subject to jointure and portions.

II. AND WHAS the hds hby settled are subjt to a jture rent-chge of £—— a yr, wch will become payable to —— in case she shl survive her husbd [& to powers of distress & entry, & a term of —— yrs limd to trees, for securg the same], under or by virtue of an indre, dated, &c., & made, &c., *or*, "the will of ——, dated, &c., & proved, &c." [& a deed poll of apptmt, under the hand & seal of ——, dated, &c.], & are also under or by virtue of the same indre, *or*, "will" [& deed poll], subjt to & chged with such sum, not exceedg £——, as may in the event become raisable for the portions or advcemt of the yor chln or child of the sd —— by the sd ——, & to such annl sums as may become raisable by way of intt on the sd portions for the mtce & educon of such yor chln or child, & wch sum & intt are raisable under the trusts of a term of —— yrs limd to trees for that ppose by the sd indre of settlemt, *or*, "will," [& deed poll].

That premises are subject to leases.

III. AND WHAS the sd hds hby settled are subjt to the sevl leases & tenancies mentd in the —— & —— schdles hto as affectg the same resply.

That premises are subject to mortgages.

IV. AND WHAS the hds hby settled, or some pt or pts thof, are subjt to the sevl mtge debts mentd in the first column of the second schdle hto, & the intt thron resply, wch respive mtge debts & intt are sevlly secd by the respive indres mentd in the second column of the sd second schdle hto, & are now vested in the sevl psons named in the third column of the same schdle.

Recital of strict settlement where part of the property has been sold, &c.

V. WHAS, by an indre, dated, &c., & made, &c. (being a settlemt extd in conson of the marre shortly aftwds solemnized, of the sd A. & K. his wife), the hds descd in the first schdle hto were, with other freehd hds, assured & limd after the solemnizon of the sd marre, subjt to certn uses & chges wch have failed or determined or become satisfied, to the use of the sd L. & M. for the term of 99 yrs, upon the usual trusts for securg the annl sum of £—— by way of pin-money to the sd K., with remr to the use of the sd A. & his assns durg his life, with remr to the use that if the sd K. shd survive the sd A., she shd thenceforth durg her life rece a rent-chge of £——, by way of jture, [secd by the usual powers of distress & entry, with remr to the use of the sd N. & O. for the term of 200 yrs, upon the usual trusts for further securg the sd jture rent-chge], with remr to the use of the sd P. & Q., for the term of 1,000 yrs, upon the usual trusts for securg for the portions of the yor child or chln of the sd marre the sum followg, that is to say, if there shd be but one such yor child, the sum of £——, & if there shd be two or more such yor chln, the sum of £——, with provons for the mtce, educon, & advcemt of such yor child or chln, with remr to the use of the first son of the sd A. by the sd K. in tail male, with remrs over; And by the same indre the sd A. covted, if the sd marre shd take place, to surrender the hds specified in the second schdle hto, togr with other copyhd hds, to the use of the sd R. & S., their hrs & assns, accdg to the customs of sevl manors of wch the same were resply holden, upon trusts, & subjt to powers & provons correspondg with the uses, trusts, powers, & provons thrinbfe limd & decld concerng the freehd hds thby settled, or as near thto as the nature of the ppty wd admit, but not so as to increase or multiply chges or powers of chging: And by the same indre the sd A. assned the hds comprd in or demised by the sevl indres of lease specified in the third schdle hto, togr with other leasehd hds, unto the sd R. & S., for the respive residues then unexpired of the sevl terms of yrs grted by the sd respive indres of lease, subjt to the paymt of the rents & the pformance & observce of the covts & agrmts on the pt of the respive lessees & the condons by & in the same indres resply reserved & contd, to be held after the solemnizon of the sd marre upon trusts, & subjt to powers & provons correspondg with the uses, trusts, powers, & provons thrinbfe limd & decld concerng the freehd hds thby settled, or as near thto as the nature of the premes wd admit, but not so as to increase or multiply chges, or powers of chging, & so that the sd leasehd premes shd not vest in any pson thby made tenant in tail male or in tail by pchase, unless he or she shd attn the age of twenty-one yrs, but on his or her death under that age shd devolve as if the same had formed pt of the freehds of inhance thby settled.

Disentailing assurance of freeholds preparatory to resettlement.

VI. WHAS by an indre, dated, &c., made, &c., & perfected by enrolmt as a disentailg assurce, the freehd hds hby settled were assured by the sd, *tenant for life*, & the sd, *tenant in tail*, with the consent of the sd, *tenant for life*, unto the sd —— & his hrs, subjt [to the chges & incumbces hinafter mentd as affectg the same resply, &] to the estes, & chges prior to & the powers overreachg the este in tail [male] of the sd, *tenant in tail*, other than the este of the sd, *tenant for life*, durg his life, but dischged from all estes in tail [male or in tail] at law or in equity, of the sd, *tenant in tail*, & all estes, rts, intts, & powers to take effect after the determinon, or in defeasce of such estes in tail [male or in tail] to such uses, for such estes, upon such trusts, & subjt to such powers & provons, as the sd, *tenant for life*, &, *tenant in tail*, shd at any time or times thrafter, by any deed or deeds, revocable or irrevocable, jtly appt, & in default of such apptmt, to the use of the sd, *tenant for life*, & his assns durg his life, witht impeachmt of waste, in restoron of his life este under an indre of settlemt, dated, &c., & made, &c., with the powers annexed thto, with remr to the uses thrin mentd.

Short recital of effect of settlement and disentailing assurance, comprising freeholds and copyholds.

VII. WHAS by the effect of an indre of settlemt dated, &c., & of an indre dated, &c., & perfected by enrolmt as a disentailg assurce, & of certn deeds, events, mres & things recited or implied in such indres or one of them, & of the exercise of certn powers in the sd indre of settlemt contd, the hds of freehd tenure hby settled now stand limd [subjt to the chges & incumbces hinafter mentd, as affectg the same premes resply, &] subjt to the estes & chges prior to & the powers overreachg the este in tail male by the sd indre of settlemt limd to the sd ——, To the use, *here set out limitons of disentailg deed*, & the hds of copyhd tenure hby settled now stand settled [subjt to the chges & incumbces hinafter mentd as affectg the same resply] upon trusts & subjt to powers & provons correspondg with the uses, trusts, powers, & provons to wch the sd freehold premes are subjt; AND WHAS the legal este of the sd copyhd hds is now vested in the sd K. & L., the psnt trees of the sd indre of settlemt.

Short recital of title to leaseholds under strict settlement.

VIII. AND WHAS the leasehd hds specified in the —— schdle hto are vested in the sd M. & N., *the trees of the strict settlemt*, for the respive residues of the sevl terms grted by the sevl leases specified in such schdle, subjt to the rents, covts, & condons reserved by & contd in such respive leases [& subjt to the sevl chges or incumbces hinafter mentd as affectg the same hds, or some pt or pts thof resply], upon, & subjt to trusts, powers, & provons correspondg as nearly as the nature of the ppty admits with the uses, trusts, powers, & provons to, upon, & subjt to wch the sd freehd hds stood limd & settled under or by virtue of the sd indre of settlemt, immedly bfe the exon of the sd indre of, &c., *the disentailg assurce*, & wch preceded the este in tail [male] by the sd settlemt limd to the sd B., & subjt thto in trust for the sd B. absolutely.

State of family.

IX. AND WHAS there have been issue of the marre of the sd A. & B. —— chln only, viz., the sd ——, the eldest son, & —— yor chln, —— of whom have attned their respive ages of twenty-one yrs, & the remaing —— are still infants & unmarried.

X. AND WHAS divers sales & exchanges [& partons] of portions of the freehd, copyhd, & leasehd estes & hds, & enfranchisemts of copyhd tenemts holden of the sevl manors origlly comprd in or wch have since become subjt to the uses & trusts of the sd indre of settlemt, & enclosures of common & waste lands, have from time to time taken place since the date of the sd indre of settlemt under the powers thrin contd, or under statutory powers or authorities by means whof divers portions of the hds origlly comprd in, or wch have since become subjt to the uses & trusts of the sd indre of settlemt have been disposed of or parted with; & divers pchases of hds & enfranchisemts of copyhd hds comprd in the sd settlemt & investmts have from time to time been made with capl moys reced upon such sales, exchanges [partons], & enfranchisemts or orwise arisg under the sd settlemt or under statutory powers, And the hds pchased or reced in exchange [or on parton], or allotted on enclosures, & the stks, funds, & secs so pchased, & wch resply remain undisposed of, are specified in the second schdle hto, & the same resply became, & were immedly bfe the exon of the indre next hinafter recited, *disentailg assurce*, subjt to such of the uses & trusts limd & decld by the sd indre of settlemt, or in the exercise of the powers thof, as were applicable thto, regard being had to the nature thof resply: AND WHAS the legal este of such of the last-mentd hds as are of copyhd or leasehd tenure is now vested in the sd X. & Y., the psnt trees of the sd indre of settlemt, And the sd stks, funds, & secs are now standg in the names or under the legal control of the sd X. & Y.

Short recital of interim dealings with the settled property.

CLAUSES.

I. TO SUCH USES, upon such trusts, & subjt to such powers & provons as the sd, *father* & *son*, shl from time to time by any deed or deeds, revocable or irrevocable, jtly appt: AND IN DEFAULT of, & subjt to any such apptmt, &c.

Limitation to joint appointment of father and son.

II. TO THE USE of the sd, *trees*, for the term of —— yrs, to commce from ——, witht impeachmt of waste, upon the

Limitation of a term.

trusts, & subjt to the powers & provons hinafter decld & contd concerng the same, & from & after the expiron or determinon of the sd term, & in the meantime subjt thto, & to the trusts thof, TO THE USE, &c., *or for brevity*, "TO THE USE of the sd, *trees*, for the term of —— yrs from ——, witht impeachmt of waste, upon the trusts hinafter decld, & subjt thto, TO THE USE, &c."

Limitation of a life estate.

III. TO THE USE of (*a*) the sd —— & his assns durg his life [witht impeachmt of waste (*b*)] (*c*), & from & after his dece, TO THE USE, &c.

(*a*) If the legal estate is in the trustees, say, "IN TRUST for."

Restriction as to waste.

(*b*) In the absence of these words a legal tenant for life is not liable for permissive waste.; *Re Cartwright*, 41 Ch. D. 532. See the discussion in Goodeve, R. P. 44. If desired, add here, "other than wilful or permissive waste in pullg down houses, or bldgs, or sufferg the same to go to decay, & except waste in cuttg timber planted or left standg for ornamt or shelter, or any timber, or timber-like trees, orwise than in a due & pper course of managemt [& with the consent in writg of the sd, *trees*, or the survors or survor of them, or other the trees or tree for the time being of these psnts, wch consent it shl be wholly in the discron of the sd trees or tree to give or withhold witht incurrg any responsibility in that behalf]." In the subsequent limitations without impeachment of waste, add, "save as afsd."

Provision as to mines.

For a mining estate the following may be added if so intended: "& so that he & they shl have full liberty to work, get, & dispose of all or any of the mines & minls hby settled, & to exercise & use all such powers, rts, & means for that ppose as might be conferred on a lessee of the sd mines & minls."

Where there are several life estates they may be declared to be without impeachment of waste by a separate clause.

Law of waste.

As to the law of Waste, see Bewes on Waste; Vaizey on Settlements; Tudor's L. C. Conv., Notes to *Lewis Bowles' case;* Jud. Act, 1873, s. 25 (3), as to equitable waste; S. L. A., 1882, s. 35, enabling a tenant for life impeachable for waste in respect of timber with the consent of the trustees or the Court to cut and sell timber ripe and fit for cutting, and to retain one-fourth of the proceeds as rents and profits, the other three-fourths being set aside as capital (*Re Llewellin*, 37 Ch. D. 317); s. 11 of the same Act directing that where the tenant for life is impeachable for waste three-fourths, and where he is not, one-fourth, of the rent reserved in a mining lease shall, unless a contrary intention is expressed in the settlement, be set aside as capital (see *Re Duke of Newcastle*, 24 Ch. D. 129); and s. 28 of the same Act, as to the maintenance and repair of improvements executed under the Act. As to

(*c*) See note next page.

Limitation of life estate to married woman without anticipation (*d*).

IV. To THE USE of (*e*) the sd ——, durg her life [witht impeachmt of waste (*f*)], & so that durg the sd intd coverture the same shl be for her septe use witht power of anticipon, & from & after her dece, To THE USE OF, &c.

Life interest determinable on bankruptcy or alienation.

Variations for a life interest in remainder (*g*).

V. TO THE USE of the sd, *trees*, their exs, ads, & assns, durg, the life of the sd K., [witht impeachmt of waste.] UPON TRUST that [*for a tenant for life in remr, say*, if at the time of this psnt trust takg effect in posson no act or event shl have happened whby the life este hby given to the sd K., in the sd hds & premes hby settled or any pt thof wd, if belongg absolutely to him, have become vested in or chged in favour of some other pson or psons or a corporon] the sd, *trees*, or the survor of them, shl allow the sd K. to enter into & remain in the posson or rect of the rents & profits of the sd premes [includg the produce of timber & minls], durg his life or until some act or event shl happen whby such life este or some pt thof wd, if belongg absolutely to him, become vested in or chged in favour of some other pson or psons or a corporon [*for a tenant for life in remr, say*, " some such act or event as afsd

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permissive waste, see 37 Sol. J. 76; *Re Cartwright*, 41 Ch. D. 532. As to equitable waste, see *Bedoyere* v. *Greville-Nugent*, 25 L. R. Ir. 143. As to "ameliorating waste," see *Meux* v. *Cobley*, [1892] 2 Ch. 253.

(*c*) Where the powers annexed to the life estate in a prior settlement are to be kept on foot, insert here, " in restoron & by way of confirmon of the life este of the sd ——, limd to him by the sd indre of settlemt of the —— day of ——." As to keeping alive the old powers, see *supra*, Vol. I., p. 468, *infra*, p. 656, note.

As to estates given to married women.

(*d*) As to the employment, notwithstanding the M. W. P. A,, 1882, of the words " for her septe use," and as to imposing a restraint on anticipation during coverture, see p. 466, note. The practice before the Act in giving a life estate in land, or a rent-charge to a married woman during the coverture, was to limit it to trustees in trust for her separate use, so as to exclude the husband from taking the legal estate, but this is now unnecessary, and a legal life estate or rent-charge may be limited to a married woman (for her separate use) without trustees in the same way as to a man. See also *Re Lumley*, W. N. 1896, 90; [1896] 2 Ch. 690.

(*e*) If the legal estate is in the trustees, say, " IN TRUST for."

(*f*) See note (*b*) on last page. As to the effect of the restraint on anticipation on these words, see *Re Lumley*, [1896] 2 Ch. 690.

Effect of forfeiture.

(*g*) See pp. 469, 470, notes. In the case of legal limitations, a limitation over on the determination of a life estate by forfeiture, not taking effect on the natural determination of the prior estate, is not a contingent remainder but an executory devise, *Blackman* v. *Fysh*, [1892] 3 Ch. 209.

shl happen "] (*a*): PROVD ALWAYS, & it is hby agrd that in the event of the [failure or] determinon of the sd life este of the sd K., under the trusts lastly hinbfe contd, all the powers annexed thto shl cease to be exercisable by him after [*or*, shl continue to be exercisable by him notwg] such [failure or] determinon [other than & except, *specify any power to be excepted*] (*b*).

Discretionary trust for application of income after bankruptcy, &c., of tenant for life for the benefit of him and his family (*c*).

VI. AND IT IS HBY AGRD & decld that the sd trees or tree shl after the [failure or] determinon durg the lifetime of the sd K. of his sd life este, [but witht prejudice to the uses or estes hby limd or to be limd by virtue of the powers hrin contd, havg priority to the este hby limd to the sd, *trees*, durg the life of the sd K.,] enter into the posson or rect of the rents & profits of the hds hby settled, & shl durg the remr of the life of the sd K. continue in such posson or rect, & manage or superintend the managemt of the same premes with the same powers in that behalf as if they or he were in such posson or rect durg the minority of an infant tenant in tail [male] (*d*) [& shl keep up

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(*a*) If the estate of the trustees is "without impeachment of waste," the following proviso may be inserted here :—

Provision as to waste by trustees.

"PROVD ALWAYS that the exemption from impeachmt for waste hby conferred on the sd trees or tree in respt of the use or este so limd to them as afsd durg the life of the sd K., is so conferred on the sd trees for their proton, but the same shl not authorise or entle the sd K. or any other pson beneflly entled under such use or este to require the sd trees to cut timber or commit any other act of waste for the benefit of the sd K., or such other pson as afsd, in any case in wch the sd trees shl not in their discron think pper so to do: AND PROVD, &c."

As to preservation of powers after forfeiture.

(*b*) The question whether any and what powers annexed to the life estate should be preserved in this case must of course depend on the circumstances of each case. The powers of the tenant for life under the S. L. A. would of course cease after the forfeiture of his estate; and the statutory powers would be suspended during the discretionary trust in the next form, see next note.

As to S. L. A.

(*c*) See *ante*, pp. 469, 470, notes. The parties for whose benefit this discretionary trust is declared will not together constitute the tenant for life under the S. L. A., 1882, and on its coming into operation the statutory powers will cease to be exerciseable (*Re Atkinson*, 31 Ch. D. 577). It may therefore be expedient to confer such powers expressly on the trustees. See *ante*, p. 501.

(*d*) If there is no express power to manage during minorities add here, if required, "& with power to stk & cultivate farms & plant underwood."

& maintain the mansion-house, grounds, & park at —— in a pper state for occupon], & shl out of the rents & profits of the sd premes [includg the produce of timber & minls], pay the expses incurred in such managemt (*e*) [& keepg up], or orwise in respt of the premes, & any annl sums & the intt on any ppal sum chged on the same premes or any pt thof, & shl durg the remr of the life of the sd K., or such shorter period or periods, eir continuous or discontinuous, as the sd trees or tree shl in their or his absolute discron think fit, [delegate eir exply or by implicon, witht being responsible for loss, & upon such terms as they or he shl think fit, all or any of the powers of managemt lastly hinbfe contd to &] pay all or any pt of the net rents & profits of the sd premes, after makg the paymts hinbfe directed, unto or apply the same for the mtce or psonal support or benefit of all or any one or more to the exclusion of the others or other of the follg psons, namely, the sd K. & his wife, if any, & his chln or remoter issue for the time being in existce [whether by his now intd or any after taken wife, &] whether minors or adults, & the other psons for the time being intted in remr whether absolutely, contingently, or orwise in the premes hby settled, in such mner as the sd trees or tree shl in their or his absolute discron think pper, & shl durg such period & at such discron as afsd, permit all or any of such psons psonally to occupy all or any of the sd premes, & subjt to the discronary trust or power lastly hinbfe contd, shl pay or apply the surplus of the sd rents & profits to the pson or psons or for the pposes to or upon wch the net rents & profits of the sd premes hby settled wd be payable or applicable if the sd K. were dead, or shl permit the sd premes to be occupied or enjoyed by such pson or psons.

Trust of income after bankruptcy, &c., of tenant for life when there is no discretionary trust in his favour (*f*).

VII. AND IT IS HBY AGRD & decld, that after the [failure or] determinon durg the life of the sd K. of his sd life este, the sd trees or tree shl durg the remr of his life [but witht prejudice to the uses or estes hby limd or to be limd by virtue of the powers hrin contd, havg priority to the este hby limd to the sd, *trees*, durg the life of the sd K.,] pay or apply the net rents

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(*e*) *In the case mentioned in the last note, here add*, "stkg, plantg, & cultivon."

(*f*) See p. 472, note.

& profits of the sd hds & premes to the pson or psons or for the pposes to or for wch the same wd be payable or applicable if the sd K. were dead, or shl permit such pson or psons to occupy & enjoy the sd premes.

General proviso determining tenancies for life on bankruptcy, &c. (*a*).

VIII. PROVD ALWAYS, & it is hby agrd that if any act or event shl happen whby if the life este hby given to any pson belonged to him absolutely the same or any pt thereof wd become vested in or chged in favour of any other pson or psons or a corporon, then, *if the life este is not to be protected, say*, "such pson shl durg the remr of his life, but witht prejudice to the uses, estes, or powers precedg or overridg his life este, & the uses & estes limd or created in exercise of such powers, stand seised of all the sd premes hby settled in trust for the pson or psons who wd for the time being be entled thto, if he were dead, & in such case all powers annexed to his life este shl cease to be exercisable;" *if the life este is to be protected, say*, "the benefl rt of such pson to the posson or rect of the rents & profits of all the sd premes hby settled durg his life shl cease & determine as if he were dead, but the legal este in the sd premes shl remain subsistg in him durg the remr of his life as a bare legal este, witht prejudice nevs to the future exercise of the powers hby given to him as such tenant for life, [other than & except, *specify any powers to be excepted*,] & the sd trees or tree shl take posson or enter into the rect of the rents & profits of the sd premes hby settled, & shl durg the remr of the life of the pson whose benefl enjoymt of the sd premes shl have ceased as afsd, continue in such posson or rect, & manage, &c., *continue as in form* VI., *mutatis mutandis.*

Limitation of legal rent-charge to son during joint lives of himself and father (*b*).

IX. TO THE USE that the sd, *son*, & his assns, shl durg the jt lives of himself & the sd, *father*, rece the yrly rent-chge of £—— to commce from the —— day of —— [the sd intd marre], & to be chged upon & issuing out of all the hds hby settled & to be considered as accruing from day to day, but to be payable qtrly, witht any dedon (*c*) [except for duty] *or* [free

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(*a*) See p. 469, note. This form is adapted to legal tenancies for life; but it is generally better in such a case to vest the legal estate in the trustees.

(*b*) As to the remedies of the owner of a rent-charge see C. A., 1881, s. 44; *ante*, Vol. I., pp. 314, 560.

"Without any deduction."

(*c*) As to the effect of the words "without any deduction" as regards land tax, income tax, and succession duty, see Elph. Introd. 370, and as regards estate duty, ***Re Parker Jervis***, [1898] 2 Ch. 643.

from all death duties] on, &c. *specify days, or*, "on the usual qtr days," the first of such paymts to be made on the —— day of —— next [at the end of three calr months after the sd intd marre], if the sd son shl then be livg: AND subjt & chged as afsd, TO THE USE, &c.

Limitatio of rent-charge to trustees for maintenance of son's eldest son in event of his predeceasing father.

X. AND to the further use that in case the sd, *son*, shl die in the lifetime of the sd, *father*, leavg one or more son or sons, the hds hby settled shl from & after the death of the sd, *son*, & durg the jt lives of the sd, *father*, & the eldest or only son for the time being in existce of the sd, *son*, stand & be chged with the paymt to the sd trees or tree for the time being of the yrly sum or rent-chge of £—— until such eldest or only son for the time being shl attn the age of —— yrs, & after he shl have attned that age of the yrly sum or rent-chge of £——, such respive yrly sums or rent-chges to be considered as accruing from day to day, but to be pd by eql qtrly paymts on the usual qtrly days witht any dedon [except for duty] [or free from all death duties] & the first qtrly paymt thof resply to be made on such of the sd days as shl happen next after the death of the sd, *son*, or after his sd eldest or only son shl attn the age of —— yrs (as the case may be); AND it is hby agrd & decld that the sd trees or tree shl stand possed of the sd respive yrly sums or rent-chges of £—— & £—— hinbfe chged & made payable to them or him, Upon trust to apply all or any pt thof resply at their or his discron for the mtce & educon, or orwise for the benefit of such eldest or only son for the time being of the sd, *son*, as afsd durg his minority, eir directly or by paying the same for that ppose to the gdian or gdians for the time being of such eldest or only son, witht being concerned to see to the applicon thof, And that such pt (if any) of the same respive rent-chges as may not be applied in mner afsd, shl be accumulated by the sd trees or tree by the investmt thof in any investmts for the time being authorized by law for the investmt of trust moys, but with power to resort to any such accumulons in any subseqt yr, & to apply the same for the mtce, educon, or benefit of such eldest or only son in mner afsd, & subjt thto such accumulons shl belong to such eldest or only son, & shl be pd to him on his attng the age of twenty-one yrs, or to his ads if he shl die under that age, & in the event of his attng that age, in the lifetime of the sd, *father*, the sd yrly rent-chge of £—— shl thenceforth be pd to him.

Limitation of legal rent-charge to wife without anticipation.

Variation for pin-money (*a*).

XI. TO THE USE that the sd, *wife*, & her assns shl durg her life [the sd *wife*, shl durg the jt lives of the sd, *husbd*, & *wife*,] rece for her septe use [by way of pin-moy] the yrly rent-chge of £——, commencg from the sd intd marre [the yrly rent-chge follg, that is to say, so long as the sd, *husbd's father*, shl be livg, the yrly sum of £—— commencg from the sd intd marre, & after his death the yrly sum of £——] to be chged upon & issuing out of all the hds hby settled, & to be considered as accruing from day to day, but to be payable qtrly, witht any dedon [except for duty] [*or* free from all death duties] on, &c., *specify days, or*, "on the usual qtr days," the first of such paymts to be made on such of the sd days as shl happen next after the sd intd marre, but so that [durg coverture (*b*)], she shl not have power to anticipate such rent-chge: And subjt & chged as afsd, TO THE USE, &c.

Trust to raise and pay an annuity when the legal estate is in trustees.

Variation when the annuity is to be paid to wife without anticipation.

XII. UPON TRUST that the sd, *trees*, & the survor of them, shl durg the life of the sd ——, *or*, "durg the jt lives of the sd, *husbd*, & *wife*," by & out of the rents & profits of the hds hby settled, or by the sale of timber or minls, or by mtge of the same premes, or any of them, or by all or any of the means afsd, raise the yrly sum of £——, commencg from the —— day of —— [the sd intd marre], to be considered as accruing from day to day, but to be payable qtrly, witht any dedon on, &c., *specify days, or*, "on the usual qtr days," the first of such paymts to be made on the —— day of —— next [at the end of three calr months after the sd intd marre], & shl pay the same yrly sum to the sd ——, & his assns, *or*, "to the sd, *wife*, for her septe use [by way of pin-moy], & so that [durg coverture (*b*)], she shl not have power to anticipate

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As to mode of securing wife's pin-money.

(*a*) The practice hitherto has been to secure the wife's pin-money during the joint lives by limiting a term to trustees upon trusts for the raising and payment thereof; but the effect of the M. W. P. A., 1882, is to render this machinery altogether unnecessary, and the proper course in future will be to limit the rent-charge direct to the wife for her separate use, who will be entitled to it, subject to the restraint on anticipation, and to exercise the statutory remedies for the recovery of it, as a *feme sole:* see p. 466, note; p. 579, note (*d*).

(*b*) If the rent-charge is only payable during the joint lives of the husband and wife, the words in this bracket will of course be omitted.

the same," AND subjt to the paymt of the sd anny, UPON TRUST, &c.

Limitation of jointure rent-charge to wife.

Variation where the rent-charge is to be increased after the death of the husband's father (c).

XIII. TO THE USE that if the sd, *wife,* shl survive the sd, *husbd,* the sd, *wife,* & her assns, shl thenceforth durg her life rece for her septe use the yrly rent-chge [follg, that is to say, if & so long as the sd, *husbd's father,* shl be livg, the yrly rent-chge of £——, & from & after his death the yrly rent-chge] of £——, to be in full for her jture, & in bar of all dower & free-bench, & to be chged upon, & issuing out of all the hds hby settled, *or as the case may be,* & to be considered as accruing from day to day, but to be payable by four eql qtrly paymts, witht any dedon [except duty] [*or* free from all death duties] the first of such paymts [as to the sd rent-chge of £——] to be made at the end of three calr months after the death of the sd, *husbd,* [if the sd, *wife,* & also the sd *husbd's father,* shl then be livg, & as to the sd rent-chge of £——, to be made at the end of three calr months after the death of the survor of the sd, *husbd,* &, *husbd's father*], if the sd, *wife,* shl then be livg, PROVD that the sd, *wife,* shl not durg her sd intd coverture have power to dispose of or chge such rent-chge [respive rent-chges] by anticipon, And subjt & chged as afsd, TO THE USE, &c.

Power of distress to secure rent-charge.

Variations for several rent-charges (c).

XIV. AND TO THE FURTHER USE that if the sd yrly rent-chge [any of the sd yrly rent-chges hinbfe limd, & wch shl take effect,] or any pt thof, shl at any time be unpd for twenty-one days after any of the times hby appted for the paymt thof, then & so often it shl be lful for the sd —— & his assns [the pson or psons entled to the same rent-chge] to enter into & distrain upon the sd premes hinbfe chged thwith, or any pt thof, & to dispose accdg to law of the distress or distresses then & there found, to the intent that thby or orwise the sd rent-chge so in arrear, & all costs & expses occasd by the non-paymt thof, may be fully pd & satisfied.

Power of entry to secure rent-charge.

Variations for several rent-charges (c).

XV. AND TO THE FURTHER USE that if the sd rent-chge [any such rent-chge wch shl take effect] or any pt thof, shl at any time be unpd for forty days after any of the times hinbfe appted for the paymt thof, then and so often, although there shl not have been any legal demand made thof, it shl be lful for the sd —— or his assns [the pson or psons entled to the same rent-chge] to enter into & upon, & to hold the sd premes hinbfe chged thwith, or any pt thof, & to rece the rents & profits thof until such rent-chge & the arrears thof due at the time of such entry, or aftwds to become due durg his or their being in posson of the same premes, shl thby or orwise be fully pd & satisfied, togr with all costs & expses occasd by the non-paymt thof, such posson, when taken, to be witht impeachmt of waste, AND subjt & chged as hinbfe is mentd, TO THE USE, &c.

(c) See *ante*, Vol. I., p. 314, note. As to estate duty on a jointure, see *Re Parker Jervis*, [1898] 2 Ch. 643.

Power to owner of rent-charge to appoint a term to trustees for raising it (*a*).

XVI. AND TO THE FURTHER USE that it shl be lful for the sd —— or his assns [the pson or psons for the time being entled to such rent-chge] at any time after he or they shl have become entled to such rent-chge in posson by deed to appt or demise the sd premes chged thwith or any pt thof to trees or a tree for any term of yrs upon the usual trusts for raisg the same togr with all costs & expses, includg the costs of the preparon & exon of such deed of demise.

Clause giving powers for recovery of rent-charge by reference to statute.

XVII. TO THE USE that the sd —— & his assns shl have all such remedies & powers for recoverg & obtaing paymt of the sd rent-chge or annl sum of £—— & all arrears thof, & all costs & expses incurred in that behalf or in relon thto, as are, by the 44th section of the Conveg & Law of Ppty Act, 1881, conferred on psons entled to annl sums chged on land in cases to wch that enactmt applies.

Limitation to sons or daughters successively in tail male or general (*c*).

XVIII. TO THE USE of (*b*) the first & every other son [daur] of the sd, *husbd*, [by the sd, *wife*,] successively in remr one after the other, accdg to their respive seniorities, & the hrs male of their respive bodies, [*or for tail genl*, & the hrs of their respive bodies], & in default of such issue, TO THE USE of (*b*), &c.

The same in statutory form (*c*).

XIX. TO THE USE of (*b*) the first & every other son [daur] of the sd, *husbd*, [by the sd, *wife*,] successively in remr one after

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(*a*) See p. 582, note (*b*).

(*b*) If the legal estate is in the trustees, say, "IN TRUST for." An executed equitable limitation bears the same construction as a legal limitation, *Re Whiston*, [1894] 1 Ch. 661.

Enactment in C. A., 1881, as

(*c*) By the Conv. Act, 1881, s. 51, an estate, "in fee simple" may be limited in a deed by those words without the word "heirs," and an estate in tail or in the other accdg to their respive seniorities in tail male, [*or for tail genl*, in tail], with remr, To THE USE of (*d*), &c.

Limitation to daughters as tenants in common in tail male or general, with cross remainders (*e*).

XX. To THE USE of (*d*) all the daurs of the sd, *husbd*, [by the sd, *wife*,] & the hrs [male] of their respive bodies as tenants in common in eql shares: AND IF & SO often as there shl be a failure of issue [male] of any such daur, then, as well as to her origl share as to any share or shares wch shl have accrued to her, or to the hrs [male] of her body, by virtue of this present limon, To THE USE of (*d*) the others of such daurs & the hrs [male] of their respive bodies, as tenants in common, in eql shares: AND IF there shl be a failure of issue [male] of all such daurs but one, or if there shl be but one such daur, then as to the entirety of the same premes, To THE USE of (*d*) such one or only daur, & the hrs [male] of her body, & in default of such issue, To THE USE of (*d*) &c.

The same. Short form (*e*).

XXI. To THE USE of (*d*) all the daurs of the sd, *husbd*, [by the sd, *wife*,] as tenants in common in tail [male] with cross remrs betn such daurs as to their origl & accruing shares as tenants in common in tail [male], & if there shl be but one such daur, then as to the entirety of the same premes, To THE USE of (*d*) such one daur in tail [male] with remr, To THE USE of (*d*), &c.

Power to appoint to son in tail (*f*).

XXII. To THE USE of such son of the sd, *husbd*, [by the sd, *wife*,] in tail [male] as the sd A. shl by deed revocable or irrevocable or by will or codl appt, AND IN DEFAULT of & subjt to any such apptmt, To THE USE of (*d*), &c.

Limitation to issue as the parents or survivor appoint (*g*).

XXIII. To THE USE of (*d*) all or such one or more, exclusively of the others or other, of the chln or remoter issue of the sd intd marre, such remoter issue to be born & take vested intts within

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to limiting estates in fee or tail.

tail male or female, by those words, without the words "heirs of the body," or "heirs male, or female, of the body." There is some advantage in point of brevity in using the statutory form instead of the old form in limitations in tail, especially in a limitation to tenants in common in tail with cross remainders. If the statutory form of limitation is used at all, it should be used throughout for uniformity, and in that case each remainder should be introduced by the words "with remr," instead of "& in default of such issue."

(*d*) If the legal estate is in the trustees, say, "IN TRUST for."

(*e*) See note (*c*) last page, and the form in the 4th schedule to the C. A., 1881.

(*f*) This does not authorize an appointment for life or any less estate than an estate tail; *Re Porter*, 45 Ch. D. 179.

(*g*) In exercising this power the rule against perpetuities (which applies to

Rule

twenty-one yrs from the death of the survor of the sd, *husbd*, & *wife*, [or to the use of any other pson or psons in trust for such chln or child, or issue], for such estes or este, intts or intt, & if more than one, in such shares, & subjt to such chges, powers of chgg, & other powers, provons, & limons over for the benefit of all or any one or more of such chln or issue, & in such mner as the sd, *husbd*, & *wife*, shl by any deed or deeds, revocable or irrevocable, jtly appt, & in default of & subjt to any such apptmt, then as the survor of them shl in like mner, or by will or codl, appt; And in default of & subjt to any apptmt under eir of the powers lastly hinbfe contd, TO THE USE of (*a*), &c.

Limitation to children as tenants in common in fee, with accruer on death under twenty-one, &c.

XXIV. TO THE USE of (*a*) all the chln of the sd, *husbd*, [by the sd, *wife*,] their hrs & assns, *or*, "in fee simple" (*b*), as tenants in common in eql shares (*c*); AND IF & SO often as any such child being a son shl die under the age of twenty-one yrs, or being a daur shl die under that age & witht havg been married, then as well to the origl share of the child so dying as to any share or shares wch shl have accrued to him or her by virtue of this psnt limon, TO THE USE of (*a*) the others of such chln, their hrs & assns, *or*, "in fee simple," as tenants in common in eql shares; AND IF all such chln but one shl die, being sons under the age of twenty-one yrs, or being daurs under that age & witht havg been married, or if there shl be but one such child, then as to the entirety of the sd premes, TO THE USE of (*a*) such one or only child, his or her hrs & assns, *or* "in fee simple": AND IF all such chln shl die, being sons under the age of twenty-one yrs, or being daurs under that age & witht havg been married, or if there shl be no such child, then, TO THE USE of (*a*), &c.

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against perpetuities.

legal contingent remainders as well as to other limitations, *Re Frost*, 43 Ch. D. 246), and the other matters discussed (*ante* Vol. I., p. 69), must be remembered.

(*a*) If the legal estate is in the trustees, say, "IN TRUST for."

(*b*) See p. 586, note (*c*).

As to limitations over on death under 21, and as to contingent remainders.

(*c*) This limitation, being a vested remainder subject to be divested on death under twenty-one, &c., is to be preferred to a limitation to such of the children as shl attain twenty-one, &c., which is the usual form in the case of personal estate, notwithstanding that a contingent remainder in the latter form would now be protected, by the Act 40 & 41 Vict. c. 33, from failure. As to contingent remainders to classes, see *Festing* v. *Allen*, 12 M. & W. 279; *Re Lechmere and Lloyd*, 18 Ch. D. 524; *Miles* v. *Jarvis*, 24 Ch. D. 633; *Dean* v. *Dean*, [1891] 3 Ch. 150; *Symes* v. *Symes*, [1896] 1 Ch. 272; and as to the effect of the above Act, see 4 Dav. Prec., pp. 225, 389, notes; Vaizey on Settlements, p. 1164. An equitable contingent remainder created before the Act, and becoming sub-

Ultimate limitation to uses of former settlement.

XXV. TO THE USES, upon the trusts, & subjt to the powers & provons wch under or by virtue of the sd indre of settlemt of, &c., were subsistg or capable of takg effect in the premes hby assured immedly bfe the exon of the sd indre of the —— day of ——, *the disentailg deed,* [& were subseqt to the este in tail [male], limd by the sd settlmt to the sd ——], & so as to confirm or restore the same uses, trusts, powers, & provons.

Ultimate limitation to right heirs (*d*).

XXVI. TO THE USE of (*e*) the rt hrs of the sd A. [deced] for ever.

Name and arms clause, with variations (*f*).

XXVII. PROVD ALWAYS, & it is hby agrd & decld that every pson who shl under the limons hinbfe contd become entled as [legal or equitable] tenant for life, or tenant in tail [male or in tail] by pchase to the posson or rect of the rents & profits of the [*where there is a limiton to tenants in common, say,* "entirety of the"] hds hby settled, other than a person who

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sequently clothed with the legal estate, is not defeated by the failure of the prior life interest; *Re Freme*, [1891] 3 Ch. 167.

As to limitations to right heirs.

(*d*) See 3 & 4 Will. 4, c. 106, s. 4, as to the mode of tracing the descent; and as to limitations to right heirs, see 3 Dav. Prec., p. 342; Elph. Interp. 228; *Berens* v. *Fellowes*, 35 W. R. 356; and as to the operation of the rule in *Shelley's case* (1 Rep. 93 b.), where the limitation is to the heirs of a tenant for life under the prior limitations, see Tudor L. C. Conv.; Challis on Real Property, p. 141, *et seq.; Van Grutten* v. *Foxwell*, [1897] A. C. 658. A limitation in a deed to the use of A. for life without impeachment of waste, with remainder to the use "of such person or persons as at the decease of A. shall be his heir or heirs at law, and of the heirs and assigns of such person or persons" is not within the rule in *Shelley's case*; see *Evans* v. *Evans*, [1892] 2 Ch. 173, discussed 9 L. Q. R. 2. A limitation to the heir at a particular time will be found *post*, p. 801.

(*e*) If the legal estate is in trustees, say, "IN TRUST for."

As to name and arms clause.

(*f*) For the ordinary form, see 3 Dav. Prec., p. 1142. Married women are sometimes excepted, as, even if the wife's estate is not made liable to forfeiture by the refusal of the husband to assume the name and arms, it is inconvenient that the husband and wife should bear different surnames, a case of which has occurred. The clause should have regard to the rules of heraldry not permitting the assumption of arms without a licence. The form in the text, instead of shifting the legal estate from the tenant for life incurring the forfeiture, makes him a trustee for the person next entitled, which is considered to be preferable, the gift over being, from the nature of the case, not likely to take effect. As to clauses of the frame of that in the text, see 4 Dav. Prec., p. 495, note; and see, generally, Vaizey on Settlements, 1262 *et seq*. It is conceived that such a clause applies only to the original taker and not to his assigns; so that if a tenant for life in remainder were to sell his life estate before coming into possession, the purchaser would be personally free from the condition; but his estate would be liable to forfeiture by the vendor not performing the condition. As to the effect of a special name and arms clause applying to personalty settled by reference to the land, see *Re Cornwallis*, 32 Ch. D. 388.

shl then use the surname of —— & bear the arms of —— [& other than a married woman] shl within one yr after he [or she] shl so become entled [*where infants may become entled in posson, add,* "or being an infant, within one yr after he or she shl attn the age of twenty-one yrs, shl" (*a*)] assume the surname of ——, eir with or witht his or her own pper surname, & apply for a pper licence to bear the arms of —— [eir alone or qtrly with his or her own arms], And in case such licence is obtained shl forthwith assume such arms (*aa*), unless in eir of the sd cases such pson shl be prevented from so doing by death: And if the pson so entled as afsd (*b*) shl refuse or neglect within such yr to assume such surname or to apply for such licence as afsd, or shl at any time aftwds disuse such surname from any cause other than becomg a peer or peeress or becomg entled to use & using by courtesy the title of a peer or peeress or shl at any time after obtaing such licence disuse such arms, Then (*c*), & in every such case, immedly after the expiron of such yr, or such disuser, if the pson so entled as afsd shl be a tenant for life, he or she shl, durg the remr of the life of the pson so entled, but witht prejudice to the uses, estes, or powers, precedg or overridg the este of the pson entled as afsd, & to the uses & estes limd in exercise of such powers, hold the rents & profits of

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(*a*) The following words are often inserted in this place, "And also that the husbd of every female so becomg entled [not being a peer or the eldest or only son of a peer] shl within one yr after such female shl so become entled, or marry, wch shl last happen." But they are objectionable as enabling the husband to forfeit his wife's estate, which he may be compelled to do if he takes under another settlement containing a repugnant name and arms clause.

(*aa*) A condition to assume certain arms is satisfied by assuming such arms (being slightly different from the named arms) as the Heralds College grants, *Austen* v. *Collins*, [1886] W. N. 91.

(*b*) If the words in note (*a*) are inserted, insert here, "or, in the case of a married woman, her husbd."

Variation where legal estate is in trustees.

(*c*) If the legal estate is in the trustees of the settlement, say, "Then & in every such case, immedly after the expiron of such yr or such disuser, the sd, *trees*, their hrs & assns, shl, but witht prejudice, &c., *as in text,* hold the rents & profits of the sd premes in trust for the pson or psons who wd for the time being be entled to the same if the pson so entled as afsd being a tenant for life were dead, & being a tenant in tail [male or in tail] by pchase the sd premes in trust for the pson or psons who wd for the time being be entled to the same, if the pson so entled as afsd were dead, & so that in such case all powers annexed to the este of the pson entled as afsd shl cease to be exercisable [& that any apptmt prevsly made by such pson, being a married woman, of a rent-chge [life or any less intt] to her husbd after her death under the power hinafter contd shl be void, & that the enjoymt of any jture rent-chge prevsly appted by such pson [being a male] in favour of his wife, or of any portions prevsly appted by such pson [whether a male or female] in favour of his or her yor chln, under the respive powers hinafter contd, shl not be accelerated], & if the pson so entled as afsd shl be a tenant in tail [male or in tail] by pchase, then the estate in tail [male or in tail] of such pson shl absolutely determine, & the hds hby settled shl immedly devolve on the pson or psons next in remr, as if the pson so entled were dead witht havg had issue inheritable under such limon in tail [male or in tail].

Shifting clause carrying over the estate on succession to another estate. With variations (*d*).

XXVIII. PROVD ALWAYS, & it is hby agrd & decld that if any pson hby made tenant for life or tenant in tail [male] by pchase of the hds & premes hby settled shl under the limons of an indre dated, &c., *or*, " the will, dated, &c., of K., deced," [or by any other means whatsr] become actually entled, or if of full age wd be actually entled to the posson (*e*) or rect of the rents & profits or income of the X. este, in the coy of ——, thby settled [devised in strict settlemt], or of the hds or other ppty wch may by any means have become substituted for the sd X. este, or for any pt thof, or to such posson or rect subjt only to a term or terms of yrs or chges havg priority over or limd or created under the powers contd in such indre [will] or conferred by statute (*f*), then & so often as the same shl happen

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were dead, witht havg had issue inheritable under such limon in tail [male or in tail], & so that in such case all powers, &c.," *as in text.*

As to shifting clauses.

(*d*) As to clauses of this nature, see Butler's Note, Co. Lit. 327*a* ; 3 Dav. Prec. p. 368 *et seq.;* Vaizey, p. 1262 *et seq.;* and see forms adapted to various cases, 3 Dav. Prec., p. 1145 *et seq.;* 4 Dav. Prec., p. 523, 539 *et seq.* The above form indicates the contingencies which usually have to be provided for.

(*e*) See *Leslie* v. *Rothes*, [1894] 2 Ch. 499.

Variation for changes in the estate.

(*f*) The following is another form to be substituted for the above description of the X. estate, providing for its having undergone changes : "The family este of the sd ——, meang thby the X. este in the coy of ——, the hds & premes hby settled shl go & remain to the uses, upon the trusts, & subjt to the powers & provons to, upon, & subjt to wch the same hds & premes wd have stood limd & settled by virtue of these psnts if such pson were dead witht issue [male] (*a*); PROVD ALWAYS that if & so often as the este of any pson hby made tenant for life shl determine under the provon lastly hinbfe contd, every jture, rent-chge, portion, & sum for advcemt or mtce of chln wch may have been chged by him or her on the sd hds & premes hby settled, & the powers, remedies, & terms for securg the same, other than & except any portion or portions wch may have become absolutely vested in his or her child or chln, or issue, & the powers, remedies, & terms for securg the same, shl thenceforth absolutely cease & become void, & so as not to be restored by such reverter as hinafter mentd (*b*): PROVD ALSO, & it is hby agrd & decld that if by the effect of the shiftg clause hinbfe contd the ultimate limon of the hds & premes hby settled to the use of the sd A. in fee simple wd but for this psnt provo take effect in posson or in posson subjt only to a term or terms of yrs or chges limd or created by these psnts or by any exercise of the powers hrin contd or conferred by statute, then & immedly thrupon the same hds & premes shl remain or as the case may be return & remain to the uses upon the trusts & subjt to the powers & provons to, upon, & subjt to wch the same wd have stood limd if such shiftg clause had not been inserted in these psnts [*if the shiftg clause affects tenants for life, insert here if necy,*

Provision as to jointures and portions actually vested in the event of estate shifting from the person charging them.

Reverter clause.

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or the bulk thof, whether consistg of the same premes as the sd este now consists of, or in any mner altered in the way of addon, diminuon, substiton, or orwise, & whether free from or subjt to incumbces."

(*a*) As to the frame of a shifting clause with reference to the effect of a disentailing assurance as barring it, see *Doe* v. *Earl of Scarborough*, 3 Ad. & E. 897; *Milbank* v. *Vane*, [1893] 3 Ch. 79; 3 Dav. Prec. 363, note, 398.

(*b*) Or, if so intended, substitute for the last clause, "but nevs, witht prejudice as to any tenant for life whose este shl determine under this psnt clause or provon to any jture or portion moys wch may have been chged by him under the respive powers for those pposes hinafter contd bfe his este shl so determine, & to any powers & remedies & terms of yrs for securg such jture & portion moys resply."

Variation as to jointures and portions.

Clause preserving jointures and portions from destruction by the reverter clause.

"But witht prejudice, nevs, to any jture, rent-chge [portion or sum for advcemt or mtce] wch may have been chged thron by virtue of the respive powers for those pposes hinbfe contd, in favour of the widow [or any of the chln or more remote issue] of any pson hby made tenant for life, & any powers, terms of yrs or remedies for securg the same resply."]

Trusts of term to secure rent-charge.

Variations for several rent-charges (*c*).

XXIX. AND IT IS HBY AGRD & DECLD, that the sd hds & premes are hinbfe limd to the sd, *trees*, for the sd term of 100 yrs upon trust, that (*d*) if & so often as the sd rent-chge [eir of the sd rent-chges], or any pt thof [resply], shl be unpd for sixty days after any of the times hinbfe appted for the paymt thof, then the sd, *trees*, or the survor of them, shl by & out of the rents & profits of the sd premes or by the sale of timber or minls, or by mtge [or sale] of the sd premes, or any pt thof, for all or any pt of the sd term, or by all or any of the means afsd, raise & pay the sd rent-chge of £—— [the rent-chge so in arrear], & all arrears thof then due, or wch shl durg their or his continuce in posson accrue due, & all costs & expses occasd by the non-paymt thof, or incurred in the exon of the trusts of the sd term, or orwise relatg thto, & shl pay the surplus of the moys to be raised as afsd to the pson or psons for the time being entled in revon immedly expectant on the sd term to the premes thrin comprd : [AND (*e*) SUBJT as afsd, shl permit the rents & profits of the same premes, or such pt or pts thof as shl not for the time being be wanted for the pposes afsd, to be reced by the pson or psons for the time being entled to the same premes in revon immedly expectant upon the sd term.]

Trusts of term for raising portions

XXX. AND IT IS HBY AGRD & DECLD, that the sd premes are hby limd to the sd, *trees*, for the sd term of 500 yrs upon trust, if there shl be any yor child or chln of the sd

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(*c*) This form can in future seldom be required having regard to the C. A., 1881, s. 44, except in the case of an appointment of a rent-charge under a power created by a deed or will before the Act, in which case, if the rent-charge is to be considered as "arising" under the original instrument, the Act does not apply (sub-s. 6).

(*d*) The declaration usually inserted here, that the trustees shall permit the reversioner to receive the rents till default in payment, is omitted, as this is sufficiently provided for by the clause at the end of the form, or by clause XXXV., p. 602.

(*e*) The words in this bracket may be omitted, if clause XXXV., p. 602, is inserted.

for younger children.

Variations where the amount to be raised depends on the number of children, and where the husband's father takes the first life interest.

intd marre, meang thby any child or chln, who, being a son or sons, shl attn the age of twenty-one yrs, or being a daur or daurs, shl attn that age or marry, other than any son or sons who bfe his or their resply attng the age of twenty-one yrs shl become (*a*) entled [or any daur or daurs, who bfe her or their resply attng that age or marrying, shl become indefeasibly entled], whether in posson (*b*) or remr, under or by virtue of these psnts to the sd hds & premes hby settled for the first este in tail [male], then the sd, *trees*, or the survor of them, shl after the death of the sd, *husbd*, or in his lifetime at his reqt in writg [but durg the lifetime of the sd, *husbd's father*, not witht his consent in writg], raise by mtge [or sale] of the sd premes, or any pt thof, for all or any pt of the sd term, or by & out of the rents & profits thof, or any pt thof, or by the sale of timber or minls, or by all or any of the means afsd, the sum of £—— (*c*) [such sum of moy (*c*) as is hinafter mentd, that is to say, if there shl be but one such yor child, the sum of £——; & if there shl be but two such yor chln, the sum of £——; & if there shl be three or more such yor chln, the sum of £——], & shl hold the same sum

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(*a*) Where the eldest son is not necessarily the first tenant in tail [male], say, "indefeasibly."

If there is a name and arms clause in the settlement, or a shifting clause carrying over the estate on succession to another estate, care must be taken that a child becoming entitled to the estate shall be excluded from taking a portion in spite of his or her estate being defeasible under either of such clauses; this may be effected by the following variation:—

Variation for case of a name and arms or other shifting clause.

"Other than any son or sons who bfe attng the age of 21 yrs, or any daur or daurs who bfe attng that age or marrying, shl become entled under or by virtue of these psnts to the sd hds & premes hby settled for the first este in tail male or in tail, wch shl not be liable to be defeated orwise than by the effect of the provon hinbfe contd requirg the owner in posson of such este to assume & use the name & arms of ——, or the provon hinbfe contd determg the este of such owner on his or her becomg entled to the sd X. este."

(*b*) The words "in posson" appear sufficiently to express the intention, although by the effect of the minority clause the son would not be entitled to the actual possession or receipt of the rents.

(*c*) [" Free from death duties."] Care must be taken not to make the portions exhaust the whole property, leaving nothing for the eldest son, see *Reid* v. *Hoare*, 26 Ch. D. 363.

in trust for all or such one or more exclusively of the others or other of the sd yor chln [or the issue of any such yor child or chln, such issue to be born & take vested intts within twenty-one yrs from the death of the sd, *husbd*], at such age or time, or respive ages or times, if more than one in such shares, & with such future or other trusts for the benefit of such yor child or chln [or issue], & upon such condons, with such restrons, & in such mner as the sd, *husbd* (*d*), shl by any deed or deeds revocable or irrevocable, or by will or codl appt: AND IN DEFAULT of & subjt to any such apptmt, in trust for the sd yor child or chln, if more than one, in eql shares as tenants in common: PROVD ALWAYS that no such yor child who [or whose issue] shl take any pt of the sd sum of £—— [£—— or £——, as the case may be,] under any apptmt in psuance of the power hinbfe contd, shl in default of apptmt to the contrary have or be entled to any share of the unappted pt of the sd sum witht bringg the share or shares appted to him or her [or to his or her issue] into hotchpot, & acctg for the same accdly: AND UPON further trust that the sd trees or tree shl after the death of the sd, *husbd*, [& the sd, *father*,] by any such means as afsd, raise [free from death duties] such annl sum not exceedg what the intt of the expectant portion or portions for the time being of any child or chln [or more remote issue], of the sd intd marre, at the rate of 4 p.c. p.a. wd amt to, & shl apply the same for the mtce & educon or benefit of such child or chln [or more remote issue], for the time being entled in expectancy (whether under any apptmt or in default of apptmt) to a portion or portions, or of such one or more exclusively of the others or other of them as the sd, *husbd*, shl by any deed or deeds, revocable or irrevocable, or by will or codl appt, & in default of & subjt to any such apptmt, as the sd trees or tree shl think fit, & the sd trees or tree may eir themselves or himself so apply the same, or may pay the same for such ppose to the gdian or gdians of such child or chln [or more remote issue] witht seeing to the applicon thof: PROVD ALSO, & it is hby agrd & decld, that it shl be lawful for the sd trees or

Hotchpo clause.

Maintenance clause.

Advancement clause.

(*d*) If the wife takes a life interest, a power of appointment may be given to the husband and wife jointly, and to the survivor, as at page 474, form XXX.; in which case consequential variations will be necessary in the rest of the clause.

tree, after the death of the sd, *husbd*, or in his lifetime at his reqt in writg [but not durg the lifetime of the sd, *father*, witht his consent in writg], to raise by any such means as afsd any pt or pts not exceedg altogr one moiety of the expectant presumptive or vested portion to wch any child [or more remote issue] of the sd intd marre shl be entled, whether under any apptmt or in default of apptmt, & to apply the same for his or her advcemt or benefit as the sd, *husbd*, shl in mner afsd appt, & in default of & subjt to any such apptmt, as the sd trees or tree shl think fit: PROVD ALWAYS, that every advce so made shl be taken into acct in estimatg the total amt raisable for portions in eir of the cases follg, but not orwise, that is to say, if the pson for whose benefit such advce shl be made [or his or her parent] shl become entled to a portion, or if but for this psnt provo more than the sum of £——, *the maximum*, wd become raisable for portions & advcemt, in wch latter case so much of the sum raisable for portions as shl form the excess shl sink into the este & shl not be raised: PROVD ALSO, that it shl be lful for the sd trees or tree, at any time durg the lifetime of the sd, *husbd*, at his reqt in writg, & after his death at their or his discron [but not durg the lifetime of the sd, *father*, witht his consent in writg], when any portion or portions shl be payable, or when any sum shl be required for an advce, to raise, by all or any of the means afsd, the whole or any pt of the sum wch in any possible event may become raisable for portions, & the sd trees or tree shl, after paying throut any portion or portions & advce or advces then payable, hold the surplus of the moys so raised upon trust to invest the same in their or his names or name in any of the investmts in wch the moys arisg from a sale of the hds hby settled are hby or by law (*a*) authorised to be invested, with power from time to time to vary such investmts at discron, & shl stand possed of such investmts & the income thof resply as the primary fund for the paymt of portions, mtce, & advcemt resply, if any, wch may subseqtly become payable,

Provision as to events in which advances are to be considered as part of portions.

Power to raise total sum for portions before they are all payable.

(*a*) These words have reference to the S. L. A., 1882, and amending Acts, and the T. A., 1893 (56 & 57 Vict. c. 53) (see s. 1). The effect of s. 21 (xi), and s. 33 of the S. L. A. taken together appears to be that it is immaterial for this purpose whether the sale is under the statutory or an express power.

in exoneron, except in case of deficiency, of the hds hby settled, & so that no further sum shl be raised under the trusts of the sd term of 500 yrs, except in case of such deficiency, but no mtgee or pson subseqtly advancg any moy on the secy of the sd term shl be bound to inquire as to the existce of such deficiency; And upon further trust, but subjt to the trusts afsd, eir themselves or himself to apply the whole or any pt of such investmts & income resply, wch may not be required for the pposes afsd, as if such investmts had been made with moys arisg from any such sale as afsd, & so that all moys arisg from a sale of such investmts shall be deemed to be impressed with a trust for the investmt thof in the pchase of freehd hds to be settled to the uses & upon the trusts to & upon wch the freehd hds hby settled may be subjt, & for the interim investmt & applicon thof in any other mnr in wch capl moy arisg hrunder is hby or by the S. L. Acts 1882 to 1890 authorised to be invested, or to transfer & pay the same resply, or the moys arisg from the conversion of the whole or any pt of such investmts, to the trees or tree for the time being authorised to rece & give a dischge for moys arisg from any such sale as afsd (*b*), to be applied by them or him in mner afsd: PROVD ALSO that in case the sd, *husbd*, shl require any portion or portions or any advce or advces, to be raised in his lifetime, he shl be bound to keep down the intt on the sum or sums so raised durg his life: [(*c*) PROVD ALWAYS, & it is hby agrd that, subjt to the trusts & powers hinbfe decld & contd, & subjt to the rt of the sd trees or tree to raise by any of the means afsd all costs & expses incurred in the exon of the trusts of the sd term of 500 yrs, the rents & profits of the sd premes comprd in the sd term, or so much thof as shl not be required for the pposes afsd, shl be taken & reced by the pson or psons entled to the sd premes in revon immedly expectant on such term.]

Trust of surplus rents for reversioner.

XXXI. PROVD ALWAYS, & it is hby agrd & decld that if the sd, *husbd*, shl give or secure to or with any child or chln for whom a portion or portions is or are intd to be hby provd as afsd, any sum or sums of moy on his, her, or their marre, or for

Provision for satisfaction of portions by advancement.

(*b*) This of course assumes that the trustees of the portions term are not the trustees for general purposes.

(*c*) The clause in this bracket may be omitted, if clause XXXV., p. 602, be inserted.

the paymt of his, her, or their debts (*a*), or orwise for his, her, or their advcemt or prefermt in the world, then unless the sd, *husbd*, shl in writg orwise direct, such sum or sums of moy shl be taken in substiton (pro tanto, & accdg to the amt thof) for the respive portion or portions intd to be provd for the respive child or chln sevlly so advced as afsd, & such an amt only (if any) shl be appropriated for the portion of any child so advced by the sd, *husbd*, as afsd as togr with the amt of such advcemt will make up & complete the portion hby or by apptmt as afsd provd for such child, & the remr or balce of such portion or the whole of such portion, if the amt of the advcemt shl eql or exceed the amt of the portion, shl sink into the este for the benefit of the inhance unless the sd, *husbd*, shl in writg declare his intention to pchase the same for his own benefit, in wch case the same shl form part of his psonal este.

Trusts of term for securing payment of premiums on policies.

XXXII. AND IT IS HBY AGRD & DECLD that the sd premes are hby limd to the sd, *trees*, for the sd term of 100 yrs, if the sd —— shl so long live, upon trust that the sd, *trees*, or the survor of them, shl by & out of the rents & profits of the sd premes, or (if such rents & profits shl be insufft, but not orwise) by sale of timber or minls, or by mtge [or sale] of the same premes or any pt thof for all or any pt of the sd term, or by all or any of the means afsd, raise & pay the annl premiums & other sums, if any, necy for keepg on foot or restorg the sd pols of assurce & any substituted poly or pols to be effected as hinafter is provd, or for effectg any such substituted poly: And it is hby agrd that if the sd pols, or any of them, or any such substituted poly as afsd, shl become void, then & so often as the same shl happen, the sd trees or tree shl forthwith effect a new poly or pols of assurce on the life of the sd ——, in the names or name of the sd trees or tree, in such sum or sums of moy as wd have been payable if the sd —— had then died under the poly or pols wch shl have become void: And that every such substituted poly, & the moys to become payable thrunder, shl be held & applied upon the trusts, & for the pposes hby decld concerng the sd origl pols & the moys to become payable thrunder: Provd always that if any of the sd origl pols, or

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(*a*) See *Re Blockley*, 29 Ch. D. 250.

any such substituted poly as afsd, shl become void, & the sd —— shl refuse or neglect to do all such things as shl be necy or pper to enable the sd trees or tree to effect a new poly or pols in mner afsd, in such office or offices as the sd trees or tree shl think pper, or if the life of the sd —— shl not then be insurable, or shl be insurable at a prem more than double the prem for the insurce of a healthy male of his then age, the sd trees or tree shl durg the whole or such pt of the residue of the life of the sd —— as shl elapse bfe the accumulons hinafter directed shl amt to the sum hinafter mentd, raise out of the rents & profits of the sd premes the annl sum of £—— [such annl sum of moy as shl be eql to double the yrly premium reqd for insurg in such office as they or he shl select, the paymt on the death of a healthy male of the same age as the sd —— at the time of such poly becomg void of the sum wch wd have been payable on the same if he had then died], & shl accumulate the sd annl sums at compound intt by investg the same & the resultg income thof in any investmts in wch moys arisg from a sale of the sd premes hby settled are hby or by law authorized to be invested, with power from time to time to vary such investmts at discron, until the death of the sd ——, or until such accumulated fund shl amt in value to the sum wch wd have been payable under the poly or pols wch shl have become void if the sd —— had died at the time of the avoidce thof, wch shl first happen: And it is hby agrd that if the sd trees or tree shl make any accumulon under the trusts hinbfe decld, they or he shl hold such accumulated fund (*b*), upon the like trusts & subjt to the like powers &

Trusts for accumulation.

(*b*) It is conceived that in the usual case where the person during whose life the accumulations are directed is the settlor, this is not within the restrictions of the Thellusson Act (39 & 40 Geo. III. c. 98). Where there is a trust of this kind it is doubtful whether any subsequent directions for accumulation, except for the purpose of paying debts, or raising portions, would not be invalid, as offending against the Act: *Wilson* v. *Wilson*, 1 Sim. N. S. 288; *Jagger* v. *Jagger*, 25 Ch. D. 729. The Accumulations Act, 1892 (55 & 56 Vict. c. 58), s. 1, forbids a trust for accumulation "for the purchase of land only," except during the minority of the person who would for the time being, if of full age, be entitled to the rents or income. The word "only" is emphatic, and therefore the trust for accumulation is not void where, as in case of capital moneys arising under the S. L. Acts, the purchase of land is not the only manner in which the accumulations may be applied, *Re Danson*, 39 Sol. J. 557; 13 Rep. 633.

provons as are hinbfe decld & contd concerng the moys wch wd have been reced under or by virtue of the sd pols if the same had been kept on foot.

Trusts of term for raising money by mortgage for various purposes (*a*).

XXXIII. AND IT IS HBY AGRD & DECLD that the sd premes are hby limd to the sd, *trees,* for the sd term of —— yrs, UPON trust that the sd trees, & the survors & survor of them, shl as soon as conveniently may be by mtge of the sd premes or any pt thof (except the advowsons), or by the sale of timber or orwise, raise such sum or sums of moy as the sd trees or tree shl in their or his sole & absolute discron consider to be sufft for the pposes follg (that is to say), 1st, for paymt of all the costs & expses of & incidental or preliminary to the preparon, approval, & exon by all pties of the disentailg assurce of, &c., & these psnts & of any other deeds or instrumts relatg to the este or affairs of the sd ——, exted concurrently hrwith; 2ndly, for paymt of the succon duty payable in respt of the succon of the sd —— to the sd premes; 3rdly, for paymt of the este duty wch became leviable on the sd premes on the death of ——; 4thly, for puttg into thorough repair, or rebldg or renewg (if the sd trees or tree shl in their or his discron think fit so to do, & unless the same premes shl have been let on a repairg lease), the messe or dwg-house & premes called —— House, & the out-bldgs thof, & the farm & other bldgs, fences, & gates on the sd —— este; 5thly, for paymt to the trees of the sd indre of, &c., of the balce of costs & expses incurred by or payable to them as such trees, over & above what the moys remaing in their hands may be sufft to dischge, the amt of such balce to be considered as conclusively ascertained by the admission thof in writg under the hands of the sd ——, witht the trees or tree for the time being of the sd term being in any mner bound or concerned to investigate the trust accts, or under any responsibility with reference to the amt of such balce; 6thly, for the pchase of a cottage & land situate at ——, &c., now or late in the occupon of X., if the same can be pchased on terms wch the sd trees or tree shl in their or his absolute discron consider to be reasble, & the convce thof to the uses of this settlemt as if the same had been pchased with capl

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(*a*) See also the power to raise money by mortgage, *infra*, p. 633, and the note thereto.

moy arisg hrunder, & so that the same may be taken with such title as the sd trees or tree may think fit to accept; 7thly, for paymt of the expses of stkg any farm wch may for the time being be in hand; & 8thly, for paymt of all costs & expses of or incidental to any of the mres afsd, or the raisg of any moys for any of the pposes afsd, & shl pay & apply all & every sums & sum of moy so raised in or towards answerg the sevl pposes afsd in such order & mner as the sd trees or tree shl in their or his discron think fit. AND if there shl be any surplus of the moys so raised not required or applied for answerg any of the pposes afsd, the same shl be applicable in or towards the paymt & dischge of any of the chges & incumbces affectg or wch may affect the sd settled hds or any pt thof in such order & mner as the sd trees or tree shl in their or his discron think fit. AND it is hby agrd & decld that any mtge made under the trust or power in that behalf hinbfe contd, may be made eir by assignmt or demise for all or any pt of the sd term of —— yrs, or (if the sd trees or tree shl think fit,) by apptmt of the fee simple to the mtgee or mtgees, or as he or they shl direct, & may be made eir with or witht power of sale, & with or witht any provon for throwg the existg chges, & incumbces, or any of them, upon the other hds subjt thto by way of indemnity to or exoneron of the hds to be mtged, & for givg effect to any such indemnity or exoneron, & genlly upon such terms & in such mner in all respts as the sd trees or tree shl think fit, & no mtgee advcg moy upon any mtge purportg to be made under the trusts of the sd term of —— yrs, shl be bound or concerned to inquire as to the parlar ppose or object for wch the same is raised, or to see that such moy is wanted, or that no more than is wanted is raised, but every such mtge shl be valid & effectual so far as regards the proton of the mtgee or mtgees.

Trusts of term for accumulation at compound interest (*b*).

XXXIV. AND IT IS HBY AGRD & DECLD that the sd premes are hby limd to the sd, *trees*, for the sd term of twenty-one yrs [if the sd, *settlor*, [*settlors*, or eir of them] shl so long live] upon trust, that the sd, *trees*, or the survor of them,

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Trusts for accumulation.

(*b*) Although an indefinite trust for accumulation for the payment of debts not offending against the rules of law against perpetuities is not obnoxious to the Thellusson Act, it may give the mortgagees a right to insist upon the performance of the trust as *cestuis que trust*, which would be contrary to the shl by & out of the rents & profits of the same premes, or by the sale of underwood or timber wch ought to be cut in a pper course of managemt, yrly & every yr durg the same term raise the sum of £——, & shl accumulate the same at compound intt by investg the same & the resultg income thof in any investmts in wch moys arisg from a sale of the sd hds & premes hby settled are authorized to be invested, with power from time to time to vary such investmts at discron until the terminon of the sd term, & shl then hold & apply such accumulated fund as if the same had arisen from the investmt of moys arisg from a sale of any of the sd premes, with power to apply any such accumulons in like mner at any time bfe the terminon of the sd term.

General provision as to surplus rents of terms.

XXXV. PROVD ALWAYS, & it is hby agrd & decld, that subjt to the trusts hinbfe decld concerng the sd respive terms hinbfe limd, & to the rts of the trees & tree for the time being of such respive terms to raise by any of the means afsd & pay or reimburse themselves or himself all costs & expses incurred in relon to the sd sevl trusts, the rents & profits of the hds & premes comprd in each such term or such pt thof as shl from time to time remain after satisfying the sd trusts, shl be permitted to be taken & reced by the pson or psons for the time being entled to the same premes in revon immedly expectant upon such respive term.

Power to husband to jointure an after-taken wife.

XXXVI. PROVD ALWAYS, & it is hby agrd & decld, that if the sd, *husbd*, shl survive the sd, *wife* (*a*), & marry again, it shl be

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intention (*Re Fitzgerald's Settlement*, 37 Ch. D. 18); and is liable to be defeated by the debts being satisfied *aliunde*, as out of the proceeds of a sale (*Tewart* v. *Lawson*, L. R. 18 Eq. 490; *Norton* v. *Johnstone*, 30 Ch. D. 649; *Re Green*, 40 Ch. D. 610); and as a sale can now always be made by the tenant for life under the S. L. Acts, and the mortgage debts paid off out of the proceeds, the proper course appears to be to make the trust for accumulation an absolute one as in the text, so that it will continue whether the debts are paid or not. See p. 599, note (*b*). But as the Act allows an accumulation during the life of the settlor, *or*, for twenty-one years after his death, but not for the two periods combined, it seems doubtful whether an accumulation for an immediate term of twenty-one years absolute would be valid; and to prevent question it may be better to insert the words in square brackets. Care should be taken to leave a sufficient amount of income for the maintenance of the life-tenant during the period (see *Re Collins*, 32 Ch. D. 229; *Re Alford*, *ib.* 383). As to the Accumulations Act, 1892, see *ante*, p. 599, note (*b*).

(*a*) As to reasons for making the power exerciseable only after the death of the wife, see 34 Sol. J., p. 40.

lful for him, the sd, *husbd*, at any time, eir bfe or after such marre, by deed revocable or irrevocable, or by will or codl, to appt to his after-taken wife in the event of her survivg him, for her life or any less period, a rent-chge or rent-chges by way of jture not exceedg the annl sum of £——, [not exceedg durg the life of the sd, *husbd's father*, the annl sum of £——, & after his death the annl sum of £——, *or*, "but not to take effect durg the life of the sd, *father*, witht his consent in writg,'] [&] either subject to or free from death duties & to be chged upon all or any of the hds hby settled, & to be payable witht any dedon [except for duty] at such times & in such mner as the sd, *husbd*, shl direct, with such powers & remedies for securg the same by distress & entry, & rect of the rents & profits of the same premes, & by apptg or demisg or authorisg such woman to appt or demise the premes so chged to any pson or psons for any term of yrs, upon trusts for securg the same rent-chge or rent-chges, as the sd, *husbd*, shl think fit (*b*), [And also to chge the sd hds with all duties wch on the death of the sd, *husbd*, may become chged on any rent-chge appted under this psnt power,] & it is hby agrd that the power of jturg lastly hinbfe contd may be exercised as often as the sd, *husbd*, shl marry.

Power to subsequent tenants for life to charge jointures.

XXXVII. PROVD ALWAYS, & it is hby agrd & decld that it shl be lful for each [male] pson hby made tenant for life of the hds hby settled other than the sd, *husbd*, [& the sd, *father*,] eir bfe or after he shl become entled to the posson or rect of the rents & profits of the same premes, but subjt & witht prejudice to the uses, estes, & powers precedg or overridg the este of the pson exercisg this psnt power, & to the uses & estes limd or created in exercise of such powers, at any time eir bfe or after his marre with any woman by deed, revocable or irrevocable, or by will or codl to appt to such woman in the event, &c., *as in precedg form, substitutg for "husbd,"* "the pson exercisg this power" (*c*).

Power to female tenants for life to ap-

XXXVIII. PROVD ALWAYS, & it is hby agrd & decld that it shl be lful for each female hby made tenant for life of the hds hby settled, eir bfe or after she shl become entled to posson or rect

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(*b*) As to the remedies for recovery of a rent-charge, see p. 582, note.

(*c*) The provisoes, forms XLI. and XLII., pp. 606, 607, should be added here (omitting reference to portions, &c.), unless they are inserted in the manner adopted in the text, making one form apply to both jointures and portions.

point rent-charges to husbands (*a*).

of the rents & profits of the same premes, but subjt & witht prejudice to the uses, estes, & powers precedg or overridg the este of the pson exercisg this psnt power, & to the uses & estes limd or created in exercise of such powers, at any time eir bfe or after her marre, by deed, revocable or irrevocable, or by will or codl, to appt to her husbd or intd husbd in the event of his survivg her, for his life or any less period a rent-chge or rent-chges not exceedg, &c., *as in form* XXXVI., *mutatis mutandis, & substitutg for "husbd,"* "the pson exercisg this power" (*b*).

Power to husband to charge portions for children of a subsequent marriage.

XXXIX. PROVD ALWAYS, & it is hby agrd & decld that if the sd, *husbd*, shl survive the sd, *wife* (*c*), & marry again it shl be lful for him the sd, *husbd*, eir bfe or after such marre, by deed, revocable or irrevocable, or by will or codl [but subjt & witht prejudice to the sd sevl terms hinbfe limd, & to the trusts thof], to chge all or any of the sd lds & premes hby settled with the paymt for the portion or portions of his yor (*d*) child or chln by any such after-taken wife, meang thby any child or chln who, being a son or sons, shl attn the age of twenty-one yrs, or being a daur or daurs, shl attn that age or marry, other than any son or sons who, bfe his or their resply attng the age of twenty-one yrs, shl become (*e*) entled [or any daur or daurs who, bfe her or their resply attng that age or marrying, shl become indefeasibly entled], whether in posson (*f*) or remr, to the sd lds & premes hby settled for the first este in tail [male or in tail] [or the issue of any such yor child or chln, such issue to be born & take vested intts within twenty-one yrs from the death of the sd, *husbd*,] of the sum of £—— [of any sum not exceedg in the different events hinafter specified the different sums hinafter mentd], [free from death duties] that is to say, if there shl be but one such yor child the

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(*a*) Where there is a limitation to females as tenants in common the amount of the rent-charge may be made to depend upon the number of the shares.

(*b*) See last page, note (*c*).

(*c*) See p. 602, note (*a*).

(*d*) If the estate is settled on the children of the intended marriage only, this power should of course extend to all the children of a future marriage.

(*e*) Where the husband's eldest son is not necessarily the first tenant in tail [male], say, "indefeasibly." As to the effect of a name and arms or other shifting clause, see p. 594, note, and variation there suggested.

(*f*) See p. 594, note (*b*).

sum of £——, if there shl be only two such yor chln the sum of £——, & if there shl be three or more such yor chln the sum of £——], such sum to be an intt vested in such yor child or chln [or issue], or such one or more exclusively of the others or other of them, at such age or time, or respive ages or times, if more than one, in such shares, & with such future or other trusts for the benefit of any such yor child or chln [or issue], & upon such condons, with such restrons, & in such mner as the sd, *husbd*, shl in the instrumt creatg the chge direct [but not to be raised or payable durg the lifetime of the sd, *husbd's father*, witht his consent in writg], And also in like mner to chge the sd premes, or any pt thof [but subjt & witht prejudice as afsd], with such annl sum not exceedg what the intt, at the rate of 4 p.c. p.a. (*g*) of the expectant portion or portions of any child or chln [or issue] of any such future marre wd amt to, such annl sum to be clear from all deductions except [includg] death duties, & to commce from such time or times [but not durg the lifetime of the sd, *husbd's father*, witht his consent in writg], & to be applied in such mner, at the discron of such trees or tree or orwise, for the mtce & educon of the child or chln [or issue] for the time being entled in expectancy to a portion or portions, or of one or more of them as the sd, *husbd*, shl in the instrumt creatg the chge direct, And also in like mner to chge the sd premes, or any pt thof [but subjt & witht prejudice as afsd], with the paymt eir in his own lifetime or after his death [but durg the lifetime of the sd, *husbd's father*, not witht his consent in writg] of such pt not exceedg altogr one moiety of the then expectant or presumptive or vested portion of any child [or issue] of any such future marre, as the sd, *husbd*, shl durg his life, or any trees or tree shl after his death, in their or his discron, think fit, & to direct the same to be applied for the advancemt or benefit of such child [or issue] in such mner as the sd, *husbd*, shl durg his life, or such trees or tree shl after his death, think fit, but so that no advce so made shl be taken into acct in determing the total amt to be raised for portions under this psnt power unless the child [or issue] for whose benefit such advce shl be made [or his or her parent] shl become entled to a portion, or unless but for this psnt provo

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(*g*) As to the effect of this see *Re De Hoghton*, [1896] 2 Ch. 385.

more than the sum of £——, *the maximum*, would be raisable for portions & advcemts, in wch latter case so much of the sum raisable for portions as shl form the excess shl sink into the este & shl not be raised : AND ALSO to appt the premes so chged as afsd [but subjt & witht prejudice as afsd] to any pson or psons for any term of yrs commencg from the dece of the sd, *husbd*, with or witht impeachmt of waste, upon the usual trusts for raisg the ppal & annl sum or sums so chged as afsd for portions, mtce, educon, & advcemt, & the costs & expses to be incurred in the exon of the trusts of such term.

Power to limit a term for securing portions.

Power to subsequent tenants for life to charge portions. Variations for female tenants for life.

XL. PROVD ALWAYS, & it is hby agrd & decld, that it shl be lful for every pson hby made [legal or equitable] tenant for life of the sd hds & premes hby settled other than the sd, *husbd*, [& the sd, *husbd's father*,] eir bfe or after he [or she] shl become entled to the posson or rect of the rents & profits of the same premes, but subjt & witht prejudice to the uses, estes & powers precedg or overridg the este of the pson exercisg this psnt power, & to the uses & estes limd or created in exercise of such powers, at any time, eir bfe or after his [or her] marre, by deed revocable or irrevocable, or by will or codl, &c., *continue as in precedg form, mutatis mutandis, substitutg for*, "husbd," "the pson exercisg this power," *& saying*, "the yor child or chln of the pson exercisg this power by such marre," *&*, "became indefeasibly entled," &c. *Where some of the chln of tenants for life are themselves tenants for life say in the definition of yor chln*, "to the sd hds & premes hby settled for the first este for life or in tail, &c."

Proviso that a charge of a rent-charge or portions shall not take effect unless the person charging, or his issue, becomes entitled in possession (*a*).

As to charges not taking effect until possession.

XLI. PROVD ALWAYS that no chge of any rent-chge, or portions or sums for mtce or advcemt, wch may be appted or chged under the respive powers hinbfe contd (*b*), shl take effect unless eir the pson chging the same shl be, or become, or unless some of his [or her] issue shl become, or if of full age wd have become, entled (*c*) to the posson or rect of the rents & profits of the premes chged thwith.

(*a*) It should be remembered that this provision will exclude from a jointure the wife of a person not becoming entitled in possession and leaving no issue, and in the case of a settlement in tail male, if he leave daughters only, he will be unable effectively to create a jointure for his wife or portions for the daughters. If this is not intended, the proviso should be omitted.

(*b*) If this clause is contained in a settlement by a father and son, insert here, "by any pson other than the sd, *son*."

Proviso limiting total amount chargeable for rent-charges and portions.

XLII. PROVD ALWAYS that the same premes, or any pt thof, shl not by virtue of any apptmts or chges made under the respive powers hinbfe contd be at any one time subjt to the paymt of rent-chges exceedg in the whole, inclusive of the rent-chge hby limd to the sd, *wife*, if payable, the annl sum of £——, or ultimately become subjt to the paymt of any greater sum in the whole for portions, inclusive of the sum hby chged for portions of the yor chln of the sd, *husbd*, than the sum of £——, so that if by the exercise of the same respive powers, the sd premes, or any pt thof, wd, but for this psnt provo, have been chged with the paymt of rent-chges or portions to a larger amt, the chge or chges by wch such excess shl be occasd, or such pt thof resply as shl form such excess, but as regards such excess of rent-chges only durg the continuce of such excess, shl sink into the premes chged thwith & not be raisable, & the same rent-chges & portions resply shl have preferce & priority accdg to the order of limon of the estes of the psons by whom the same shl resply be chgd.

Power to female tenants for life to appoint life interests to surviving husbands (*d*).

XLIII. PROVD ALWAYS, & it is hby agrd, that it shl be lful for every female hby made tenant for life of the hds hby settled, eir bfe or after she shl become entled to the posson or rect of the rents & profits of the same premes, but subjt & witht prejudice to the uses, estes & powers precedg or overridg the este of the pson exercisg this psnt power, & to the uses & estes limd or created in exercise of such powers, at any time, eir bfe or after her marre, by deed revocable or irrevocable, or by will or codl, to appt the sd hds, or any pt or pts thof, to her husbd or intd husbd & his assns for his life, or any less period, in remr expectant on her dece, subjt or witht being subjt to impeachmt of waste: PROVD ALWAYS & it is hby decld that any man to whom the whole, or any pt or pts of the sd hds, shl be appted as last afsd, shl not exercise the powers hby given to a

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Variation for name and arms clause.

(*c*) When by the effect of a name and arms clause, a remainderman may become entitled to the receipt of the rents and profits, subject to be ousted by the birth of a person higher in order of limitation, add the words, "for an este not liable to be defeated by the birth of any other pson."

(*d*) The large powers of sale, &c., conferred on tenants for life by the S. L. Acts, 1882 to 1890, may sometimes be a reason for giving a power to appoint a rent-charge (see form XXXVIII., p. 603), rather than a life estate, to a surviving husband.

tenant for life of jturg & chging portions, [but shl, as to the premes so appted to him for life or any less este of freehd, be considered, durg the continuce of such este, as a tenant for life under the limons hrin contd for the ppose of exercisg any other power hby given to a tenant for life]: AND it is hby decld that the power lastly hinbfe contd may be exercised as often as any pson entled to exercise the same shl marry: PROVD ALWAYS that no apptmt under the power lastly hinbfe contd shl take effect, unless eir the pson makg the apptmt shl be or become, or some of her issue shl, or, if of full age & if no such apptmt had been made, wd have become, entled (*a*) to the posson or rect of the rents & profits comprd in such apptmt.

Power to charge a gross sum.

XLIV. PROVD ALWAYS, & it is hby agrd, that it shl be lful for the sd —— by any deed or deeds, revocable or irrevocable, or by will or codl [but subjt to the sd terms of —— yrs & —— yrs, & the trusts thof,] to chge all or any pt of the sd premes hby settled with the paymt of any sum or sums of moy not exceedg in the whole £—— [free from death duties], togr with intt thron at a rate not exceedg 5 p.c. p.a., for the benefit of himself or any other pson or psons, & for such pposes in all respts as he may think fit.

Power to limit a term for securing a rent-charge, or gross sum charged, or authorised to be charged (*b*).

XLV. AND TO THE FURTHER USE, [*or*, PROVD ALWAYS, & it is hby agrd,] that it shl be lful for the sd —— [for every pson to whom a rent-chge or rent-chges is or are hby limd, or to whom a power of chging the sd hds & premes hby settled, or any pt thof, with a rent-chge or rent-chges, or any ppal moys & intt, is hby given] by deed or by will or codl [subjt as afsd] to appt all or any of the premes chged as afsd [chged with any such rent-chge or rent-chges or ppal moys & intt] to any pson or psons for any term or terms of yrs, with or witht impeachmt of waste to commce from —— [from the determinon or failure of all the freehd estes hby limd, wch shl precede in order of limon the rent-chge or este of the pson exercisg this power], or any subseqt time, upon such usual trusts for raisg the rent-chge [or rent-chges, or ppal moys & intt] chged [or to be chged] as afsd, & all costs & expses in relon thto, as the sd —— [as such pson] shl think pper.

(*a*) See note (*a*), p. 606.

(*b*) Having regard to the C. A., 1881, s. 44, this power, so far as rent-charges are concerned, can rarely be wanted. See p. 582, note.

XLVI. PROVD ALWAYS, & it is hby agrd & decld, that it shl be lful for the respive trees or tree of the sd respive terms of —— yrs & —— yrs (c) with the consent of the sd, *husbd*, &, *wife*, or the survor of them, & after the dece of the survor, at the discron of such trees or tree to accept any other real secy for all or any pt of the sd annl sums or rent-chges & portion moys hby chged in substiton for the sd hds comprd in the sd terms resply, & to dischge from any secy any pts of the hds comprd in the sd terms resply, & witht wch the sd trees or tree shl deem the existg secy sufft, & every such acceptce of any new secy, & every such rele of all or any pt or pts of the hds compd in any existg secy shl be bindg on all psons inttd in the same annl sums or rent-chges or portion moys & the intt thof, & the psons derivg title to the hds so reled shl not be concerned to enquire into the suffcy in point of value or title of the substituted or retained secy or secs.

Power to trustees of terms to accept other security or release part of estates from jointures and portions.

XLVII. PROVD ALWAYS, & it is hby agrd, that if any pson who would but for this psnt provon for the time being be benefly entled to the posson or rect of the rents & profits of the sd hds & premes hby settled (*d*) as tenant for life or in tail [male, or in tail] by pchase (*e*), shl, being a male, be under the age of twenty-one yrs, or, being a female, be under that age and a spinster (*f*), the sd, *trees*, or the [survors *or*] survor of them (*g*)

Power to trustees to manage during minorities.

Variations where there are limitations to

(*c*) If only one term is limited for jointures and portions, say, " the trees or tree of the sd term of —— yrs," or in a deed creating the charge under a power (as in Prec. IV., *infra*), simply " the sd trees or tree ;" and subsequently say, " the sd term."

(*d*) Where there are limitations to tenants in common in fee, or in tail, insert here, " or of any undivided pt or share thof."

(*e*) If there is a power of appointment among children or issue, say, " be benefly entled to the posson or rect of the rents & profits of the sd hds & premes hby settled for any este by pchase, whether by apptmt or in default of apptmt."

(*f*) In a settlement in the male line only the provisions for females will of course be omitted ; and where the tenants for life are all of age, the provisions as to them will be omitted.

(*g*) If advowsons are settled, say, " may present a duly qualified clerk to the Bishop for induction on a vacancy occurrg in the incumbency of any advowson hby settled, &c." In the absence of this provision the infant can nominate by his guardian, 2 Eq. Ab. 518, pl. 3 ; *Oddie* v. *Woodford*, 3 My. & C. at p. 607.

tenants in common, and where an undivided share is settled, and for other cases (*a*).

shl enter into the posson or rect of the rents & profits of (*b*) the same premes (*c*), & shl, durg the minority, or minority &

As to the minority clause in the C. A., 1881, s. 42.

Remarks on the Act.

These statutory provisions differ from the clauses in the text:—1. In being permissive instead of directory; 2. In not being restricted (as the clause in the text necessarily is, to keep within the law as to perpetuities) to infants taking by purchase, but extending to infants taking by descent; but as regards the trusts of the accumulations the section does not go beyond what would have been lawful before the Act; and 3. In not extending to making roads, &c., and opening new mines, and in being subject to the restriction against waste where the infant is impeachable for waste.

Act may be partly relied upon.

The powers of management, &c., and maintenance in section 42, coupled with the powers which the trustee would possess on behalf of the infant under the S. L. A., s. 60 (see Vol. I., p. 476, note), are ample for all ordinary purposes; and, subject to a question as to the destination of the accumulations, it is considered that the clause may in general be relied on as sufficient; but the general trustees of the settlement should be expressly appointed trustees for the purposes of the C. A. 1881, s. 42, if express provisions are not inserted.

As to

The clause in the text, as well as the statutory clause, applies not only to the

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(*a*) As to this clause, see 3 Dav. Prec. 463: Vaizey on Settlements, 511. By the C. A., 1881, s. 42, where the person who would but for that enactment be beneficially entitled to the possession (which by s. 2 (iii.) includes receipt of the rents and profits of land) (of any tenure) is an infant, and in the case of a female unmarried, the trustees, *i.e.*, those appointed for the purpose by the settlement, or if there are none then the trustees with power of sale or of consenting to a sale, or if there are none, then the trustees appointed for the purpose by the Court, are invested with the ordinary powers of management (subject to a restriction as to cutting timber and committing waste if the infant is impeachable for waste), insurance, &c., and of applying any part of the rents and profits at discretion for the infant's maintenance, education, or benefit, or paying the same for that purpose to the parent or guardian; and the surplus income is to be invested in securities authorized by the settlement or the general law, and accumulated at compound interest. The accumulations, subject to a power to apply them for maintenance, &c., in subsequent years, are to be held in trust for the infant on attaining twenty-one, or, if a female, marrying; and in the event of the death of the infant under age, and, in the case of a female, without having been married, then if the infant was tenant for life, or tenant in tail, or tail male or female, by purchase, on the trusts declared thereof by the settlement, or if none are declared, or the infant was entitled by descent and not by purchase, or was tenant in fee simple absolute or determinable, then in trust for his or her personal representatives, as personal estate. Where the infant is entitled to an undivided share the powers of the Act may be exercised jointly with the co-owners. The statutory provisions will be excluded by the expression of a contrary intention and are to be subject to the provisions of the settlement, and only apply where the instrument comes into operation after 1881.

(*b*) As these words confer an estate on the trustees they can during the minorities act as lords of the settled manors, but see *Grigg* v. *Wilson*, 14 W. R. 819.

(*c*) For tenants in common, say, "or of such undivided pt or share thof."

spinsterhood as the case may be, of such pson, continue in such posson or rect, & manage or superintend the managemt of the same premes (*d*) [with power to cut timber & underwood for sale, repairs, or orwise, & to open & work mines, minls, quarries, & brickfields (*e*), & to stk & cultive farms (*f*), [to

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common case where the trustees take no estate in the land, but also where they have the legal estate, and the infant has only an equitable estate. As to the legal operation and effect of such a clause where the legal estate is not in the trustees (as to which there may be a difference between a directory clause, such as that in the text, and a mere power, as in the statute) see per Chitty, J., in *Dean* v. *Dean*, [1891] 3 Ch. pp. 156—7. Neither the clause in the text, nor the statutory form, applies to an infant only contingently entitled : for which see form XLVIII., *infra*.

infant equitably or contingently entitled.

If the settled property is conveyed to the trustees so as to vest the legal estate in them in trust for the infant, the case would also fall within the 43rd section of the Act giving general powers of maintenance, which provides that the accumulations (subject to a power to apply them for the maintenance of the infant in subsequent years) are to go to "the person who ultimately becomes entitled to the property from which the same arises," unless otherwise provided by the settlement; a provision which in some events is in direct conflict with s. 42 ; see p. 478, note ; Vaizey on Settlements, 1048. The trust in s. 42 of the accumulations in the event of the infant's death for his personal representatives is also less convenient than the ordinary trust (where he takes by purchase) adding them to capital. As to the right, under s. 43, of an infant life-tenant to accumulations, and as to apportionment between two funds available for maintenance, to one of which the infant is only contingently entitled, see *Re Wells*, 43 Ch. D. 281. Approved in *Re Humphreys*, [1893] 3 Ch. 1.

As to the effect of s. 43 of the C. A., 1881, as to the accumulations.

These considerations seem to make it desirable to provide expressly for the destination of the accumulations in both events in accordance with the ordinary express clause (in the text), as far as the law permits ; but where the infant takes by descent, a provision that on his death under twenty-one, the accumulations shall be added to capital instead of forming part of his estate, would not be lawful (except so far as it may be sanctioned by s. 43), and it would be better in that event to give them to his personal representatives according to s. 42. An express provision in the settlement will of course prevail under the provisions of the Act, *Re Duke of Newcastle's Estates*, 24 Ch. D. 129.

As to inserting express trust of the accumulations.

The clause in the text, being limited to minority, is not affected by the Accumulations Act, 1892, s. 1, although the accumulations may become liable to be invested in the purchase of land. See above, p. 599, note.

For a clause referring to the Act, see form XLIX.

For the form of the trust of the accumulations where the settlement contains a shifting clause, see 3 Dav. Prec., 1200.

(*d*) See p. 609, note (*g*).

(*e*) For a mining estate the following may be added here :—" & for that ppose to exercise such powers & liberties as might be conferred on a lessee of the sd mines & minls & to make any alterons in

Addition for mining estate.

(*f*) See special clauses as to this below, p. 647, forms CI. and CII.

make plantations & plant underwood], & to erect, pull down, & repair houses or other bldgs, & to drain & make roads & fences, & orwise to improve all or any of the sd premes, & to insure (*a*) bldgs agst loss or damage by fire & to make allowces & remissions of rent to & arrangemts with tenants, includg power to condone & to grant licences to commit breaches of covt] (*b*), & genlly to deal with the sd premes as if they or he were the absolute owners or owner thof, witht being responsible for any loss occasd thby (*c*), & shl, out of the rents & profits of the sd premes (*d*), [includg the produce of timber, underwood, mines, quarries, or brickfields] pay the expses incurred in such managemt or orwise in respt of the premes, & any annl sums of moy & the intt on any ppal sums of moy for the time being chged on the same premes or any pt thof (*e*), & in the next

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the plant, machy, & chattels employed in the workg of the sd mines & minls, & to dispose of the same & apply the proceeds in the pchase of new or the improvemt of existg plant, machy or chattels, keepg up as far as may be the value thof, & to exte works of any kind in relon to such mines & minls."

(*a*) Trustees are now enabled to insure without special authority by the T. A., 1893, s. 18.

(*b*) The words in this bracket may usually be omitted where brevity is desired.

Variation for undivided shares.

(*c*) Where an undivided share is settled, say, "And may exercise the sd powers of managemt over the undivided pt or share hby settled alone, or in conjon with the pson or psons entled to, or havg power in that behalf over the other undivided pt or share, or pts or shares of & in the sd hds & premes, & so that in the latter case any moys reced or outgoings pd or incurred may be apportioned after the same shl have been reced, pd, or incurred [& that notwg that any of the sd trees, or a sole tree, may be entled to, or intted in, any of the other undivided pts or shares]." As to the words in brackets, see above, p. 500, note (*c*). The same addition should be made where there are limitations to tenants in common, with the substitution of "the undivided pt or share, pts or shares belongg to any minor or minors," for "the undivided pt or share hby settled."

(*d*) For tenants in common, say, "or of such undivided pt or share thof as afsd."

(*e*) For an undivided share or tenants in common, say, "or a proportionate pt of such expses, annl sums, & intt, as the case may require."

place pay & apply such sum or sums of moy as the sd trees or tree shl think fit, havg regard to the age of such minor, in or towards his or her mtce, educon, or advcemt, & may eir themselves or himself so pay or apply the same, or may pay the same to the gdian or gdians of such minor for the ppose afsd witht seeing to the applicon thof: And shl accumulate the residue of the sd rents & profits [& produce] in the way of compound intt, by investg the same & the resultg income thof in or upon any investmts in wch moy arisg from a sale of the sd hds & premes is hby or by law authorised to be invested, with power from time to time to vary such investmts at discron, & shl stand possed of the sd residue of the sd rents & profits [& produce], & the accumulons thof (*f*), & the investmts representg the same, upon the trusts follg, that is to say, if the pson durg whose minority the same shl have been accumulated shl, being a male, attn the age of twenty-one yrs, or, being a female, attn that age or marry, then upon trust for such pson, his or her exs or ads, as psonal este (*g*), but if such pson, being a male, shl die under the age of twenty-one yrs, or, being a female, shl die under that age & witht havg been married (*h*), then upon the trusts & subjt to the powers & provons wch wd have been applicable thto if the same had arisen from a sale of the sd premes, but so that the whole or any pt of such accumulons may at any time be applied for the benefit of any such minor as if the same had been rents & profits arisg in the then current yr.

XLVIII. PROVD ALWAYS, & it is hby agrd, that if any pson who, under the limons or trusts hinbfe contd, would for the

The like for limitations in

(*f*) Where there is a prior trust for accumulation for any purpose other than the payment of debts or raising portions for younger children, the provisions in the text might be held to offend against the Thellusson Act (39 & 40 Geo. III. c. 98), see above, p. 599, note; except so far as this objection is removed by the C. A., 1881, ss. 42, 43, see p. 611, note. As to whether a trust to repair and improve out of income is within the Thellusson Act, see *Vine* v. *Raleigh*, [1891] 2 Ch. 13; *Re Mason*, [1891] 3 Ch. 467, above, p. 497, note (*f*).

As to trusts for accumulation.

(*g*) Where there is a shifting clause, say, "unless the intt of such pson shl determine as next hinafter mentioned."

(*h*) In the case mentioned in note (*g*), say, "or if the intt of such pson being a male shl determine bfe he attns the age of twenty-one yrs, or being a female shall determine bfe she attns or marries under that age."

fee simple absolute, determinable or contingent (*a*).

time being, if of full age, or, in the case of a female, married, be benefly entled to the posson or rect of the rents & profits of the sd hds & premes hby settled as owner in fee simple by pchase shl, being a male, be under the age of twenty-one yrs, or, being a female, be under that age & a spinster, the sd, *trees*, or the survor of them, shl, &c., *as in last form.*

Clause supplemental to and modifying statutory minority clause (*b*).

XLIX. PROVD ALWAYS, & it is hby agrd, that the sd, *trees*, & the survors & survor of them, shl be the trees & tree of these psnts for the pposes of the 42nd section of the Conv & Law of Ppty Act, 1881, the powers & provons whof [as hby modified & subjt to the provons hrin contd] shl apply to these psnts, [& so that it shl be obligatory on the sd trees or tree to enter into & continue in the posson or rect of the rents & profits of the sd premes hby settled [or any undivided share thof, as the case may be] in every case thby provd for]; [AND that in addon to the powers of the sd Act the sd trees or tree shl have power, &c., *insert any addonal powers required*;] [AND that any surplus rents & profits & the accumulons thof may, durg any such minority as is provd for by the sd Act, be invested in any of the modes in wch moys arisg from a sale of the sd premes are by these psnts or by law authorized to be invested ;] AND that any accumulated fund arisg from the rents & profits of the sd premes durg the minority of any tenant for life or in tail [male or in tail] by pchase shl (witht prejudice to the power to apply the same at any time as if the same had been rents & profits of the current yr) be held upon the trusts follg, that is to say, *as in form* XLVII., p. 613, And any accumulons so arisg durg the minority of any tenant in tail [male or in tail] by descent shl (witht prejudice as afsd) be held in trust for him or her or his or her psonal repves, whether he or she shl attn the age of twenty-one yrs, or, being a female, marry or not.

Power to lease for twenty-one years (*c*).

L. AND IT IS HBY AGRD, that it shl be lful for the sd, ——, durg his life, & after his death for the sd, *trees*, or the [survors

As to minority clause for limitations in fee simple.

(*a*) This form is adapted to the case of an infant entitled in fee simple, whether absolutely, or subject to a gift over or accruer clause on death under twenty-one, &c., or any other event, or contingently on attaining twenty-one, &c.; and whether the legal estate is in the trustees or not.

For variations for limitations to tenants in common, or a settlement of an undivided share, see notes to last form.

(*b*) See p. 611, note.

(*c*) As to the powers of leasing, sale, &c., now vested in tenants for life and or] survor of them, durg the minority of any son [or daur] of the sd ——, who, if of full age, wd be entled to the posson or

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other limited owners under the S. L. Acts, 1882 to 1890, see Vol. I., pp. 467, 708, notes, *ante*, p. 570, note, where the general provisions of the Acts are stated.

General arrangement of powers of leasing, sale, &c., with reference to S. L. Acts.

As to the inutility of inserting express powers of leasing, sale, &c., where the statutory powers apply, except by way of extension of the latter, see p. 572, note. In the few cases in which it may be necessary or desirable to insert express powers, they may be inserted either at length or by reference to the Act, the latter method being preferable. Forms L. to LXXXI. inclusive comprise all the powers, whether statutory or not, adapted for use where express powers are inserted at length. Forms LXXXII. and LXXXIII. are for a settlement in which express powers are to be given by reference to the Acts. Forms LXXXIV. to CVI. are of powers operating by way of extension of the statutory powers, and may for the most part be used whether those powers are relied on, or are expressly given by reference to the Acts.

Leasing powers under Acts.

The Act of 1882 contains provisions (part IV., sections 6 to 14), which in general render it unnecessary to insert express powers of leasing and accepting surrenders of leases. By section 6, a tenant for life (including any other person having the powers of a tenant for life under the Act) may lease the settled land or any part thereof or any easement, right, or privilege of any kind over or in relation to the same for any purpose, whether involving waste or not, for a term not exceeding for a building lease 99 years, for a mining lease 60 years, and for any other lease 21 years.

As to building and mining leases, see *infra*, p. 618, note, p. 619, note.

Waste.

The provision in s. 6 expressly authorising leases though involving waste is important, as it goes beyond the power hitherto usual, but leases under the Act of 1890 must not authorise waste, see 37 Sol. J. 76; as to what is waste, see *ante*, p. 578.

Provisions as to rent, &c.

Every lease is to be by deed, and to take effect in possession not later than twelve calendar months after date, and is to reserve the best rent (which includes yearly or other rent and toll, duty, royalty or other reservation, s. 2 (10) (ii.)), having regard to any fine taken, and any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case (s. 7); but the value of a surrendered lease may be taken into consideration in fixing the rent and terms of the lease, s. 13 (5); and see the Agricultural Holdings Act, 1883, s. 43, below, p. 622, note (*a*).

As to leases, &c., by a tenant for life to a county council for the purpose of the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), see that Act, ss. 12 and 13.

Fines.

Any fine (other than a fine received on the renewal of a lease to which the land was subject at the date of the settlement, and of which the lessee could compel a renewal) taken is applicable as capital, S. L. Act of 1884, s. 4, and must be paid to the trustees (ss. 42, 53); but as to a lunatic tenant for life, see the Lunacy Act, 1890, s. 120 (*h*), which clashes with the S. L. Act, 1884.

As to covenants, &c.

The lease must contain a covenant by the lessee for payment of the rent, and a condition of re-entry on non-payment thereof within a time not exceeding *thirty* days, s. 7 (3). A counterpart is to be executed by the lessee, and delivered to the tenant for life, but the execution of the lease by the tenant for life is to be evidence that this is done, s. 7 (4). A statement contained in, or endorsed on a lease signed by the tenant for life, respecting any matter of fact or calculation under the Act in relation to the lease, is in favour of the lessee rect of the rents & profits of the hds & premes hby settled (*a*), to demise (*b*) all or any of the sd hds & premes [with the

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and those claiming under him, to be sufficient evidence of the matter stated, s. 7 (5).

Covenant for renewal.

As to the insertion of a covenant for renewal, see *Re Farnell*, 33 Ch. D. 599; *Gas Light & Coke Co.* v. *Towse*, 35 Ch. D. 519; *ante*, Vol. I., p. 700, note.

Special powers.

The statutory leasing powers extend (s. 12) to the making of (1) a lease for giving effect to a contract entered into by a predecessor in title to make a lease, which, if granted, would have been binding on the successors in title (and by the Act of 1890, s. 6, this is extended to a lease pursuant to a contract by any predecessor in title); (2) a lease for giving effect to a covenant for renewal, the performance whereof could be enforced; and (3), a lease for confirming a previous lease which is voidable or void, but the lease must be such as could have been lawfully granted at the date of the original lease.

Surrenders.

The tenant for life has also full power to accept with or without consideration surrenders of leases and grant new leases (s. 13).

As to mansion-house, &c.

By the Act of 1890, s. 10 (substituted for s. 15 of the original Act), "the principal mansion-house and the lands usually occupied therewith," are not to be leased without the consent of "the trustees of the settlement" or an order of Court; see as to this, Vol. I., p. 471. As to a lease granting rights of way which are detrimental to the enjoyment of the mansion, see *Sutherland* v. *Sutherland*, [1893] 3 Ch. 169. By s. 7, a lease not exceeding twenty-one years at rack-rent, may, where the tenant is not made dispunishable for waste, be granted without giving any notice, and notwithstanding that there are no trustees for the purposes of the S. L. Acts, by writing under hand only if the term does not exceed three years from the date. See 37 Sol. J. 76.

Execution of deeds and contracts.

The tenant for life is, by s. 20, fully empowered to execute any deed for effecting the lease, including power to make a legal lease of copyholds or leaseholds vested in trustees (which could not of course be authorized by an express power, see Vol. I., p. 471, note, and Vol. II., p. 498); and to make, vary and rescind contracts for leases, s. 31.

Notice to the trustees.

As to the necessity for giving notice to the trustees and their solicitor of any intended exercise of the statutory powers under s. 45, as amended by the Act of 1884, s. 5, and the Act of 1890, s. 7 (dispensing with the necessity for notice in the case of ordinary rack-rent leases for not exceeding twenty-one years); and the desirability of excluding such necessity, see p. 299, note, Vol. I., p. 475, note.

Variations for tenants in common, and for several leasing powers.

(*a*) Where there is a limitation to tenants in common, add, "or of any undivided share or shares thof." If the deed contains several leasing powers, it may be found convenient to continue from this point as follows, "to exercise over the whole or any pt of the same premes [or, accdg to circes, of any such undivided share or shares thof] the powers follg, that is to say, FIRST, a power to demise, &c., *as in the text;* SECONDLY, a power to demise, &c."

As to use of word "demise."

(*b*) Although the phrase "appt by way of lease" is technically more appropriate where the lease is effected by appointment of the use, the word "demise" is here used as being more convenient and free from any material exception of the mansion-house & park & grounds, & any lands usually occupied thrwith] for any term of yrs not exceedg twenty-one yrs, to take effect in posson, or within six calr months from the date of the lease, so as there be reserved in every such lease the best yrly rent or rents to be incident to the revon that can be reasbly obtained, [witht takg anythg in the nature of a fine or prem,] [*or*, havg regard to any fine or prem wch may be taken, & so that any fine or prem taken shl be pd to the sd, *trees*, or the [survors or] survor of them, & be applied as if the same had arisen from a sale of the sd premes (*c*)], & so as there be contd in every such lease a condon of re-entry for non-paymt within a reasble time, to be thrin specified, of the rent or rents thby reserved.

The same where there are various limitations for life and in tail or fee.

LI. AND IT IS HBY AGRD, that it shl be lful for (*d*) every pson hby made tenant for life of the sd hds & premes hby settled, when he [or she] shl be entled to the posson or rect of the rents & profits of the same premes, & also for the sd, *trees*, or the [survors or] survor of them, durg the minority of any pson who, under the limons hinbfe contd, if of full age, wd be entled, &c., *continue as in precedg form.*

Power to grant

LII. AND ALSO (*e*) to demise all or any part of the sd hds &

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objection, and in any case in which the express power operates under the S. L. A., 1882, s. 57, by way of extension of the statutory powers, the latter word is strictly correct.

Variation as to fines on renewal.

(*c*) If desired, add, "except that any fine or prem reced on the renewal of any lease wch is renewable by contract or custom shl be deemed to be income;" there seems to be nothing to prevent this exception being extended to the renewal of a lease under the statutory power, notwithstanding the provision in the S. L. A., 1884, s. 4, that fines are to be capital, as this would be an extension and not a restriction, of the rights of the tenant for life.

Variation for name and arms clause.

(*d*) Where the form of name and arms clause at p. 589 is used, say "for every pson for the time being benefly entled under these psnts to the posson or rect of the rents & profits of the hds & premes hby settled for any legal or equitable este of freehd, & also for the sd, *trees*, or the [survors or] survor of them, durg the minority of any pson who, if of full age, wld be entled as afsd, &c."

(*e*) If the form given above, p. 616, note (*a*), is adopted, this will run, "AND SECONDLY, &c." If it should be necessary to make a new commencement say, "AND IT IS HBY FURTHER AGRD that it shl be lful building and improving leases.

Variation for reversionary leases (*a*).

premes hby settled to any pson or psons who shl improve or covt to improve the same within *three* yrs from the date of the lease by bldg thron any new house or bldg, or by repairg, addg to, or improvg any then existg house or bldg, for any term of yrs not exceedg *ninety-nine* yrs, to take effect in posson, or

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for the pson or psons hinbfe authorized to grt leases of the hds & premes hby settled to demise, &c."

Power to grant building leases under S. L. Acts.

(*a*) A tenant for life or person having the powers of a tenant for life under the S. L. A., 1882, may under s. 6 grant building leases, including leases of easements, &c., for any term not exceeding ninety-nine years. The general provisions of the Act as to the terms of a lease (s. 7) and other matters relating to the leasing powers (ss. 12, 13, 19, 20, and 31, and the S. L. A., 1890, s. 10, repealing and replacing s. 15 of the Act of 1882), which are stated or referred to in p. 615, note, apply equally to building leases.

Provisions as to building leases.

By s. 8, "Every building lease is to be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, improved, or repaired, or agreeing to erect, improve or repair buildings, or having executed, or agreeing to execute, on the land leased," an improvement authorized by the Act (s. 25) for or in connection with building purposes. The section extends to the case where the lessee agrees to expend a specified sum on the improvements, *Re Daniell*, [1894] 3 Ch. 503. A peppercorn rent or a nominal or other rent, less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

As to leasing in lots.

It is also provided (sub-s. 3) that where the land is contracted to be leased in lots the entire rent may be apportioned in any manner, save that the rent reserved by any lease is not to be less than 10*s*., nor more than one-fifth of the full annual value of the land and buildings; and the total rent reserved on all the leases for the time being granted is not to be less than the total rent, which, in order that the leases may be in conformity with the Act, ought to be reserved in respect of the whole land for the time being leased.

As to option of purchase.

By the S. L. A., 1889 (52 & 53 Vict. c. 36), a building lease or agreement made under the powers of the Act of 1882, may contain an option of purchase, to be exercised within ten years, at a price to be fixed at the time of making the lease or agreement.

As to artizans' dwellings.

As to a lease for artizans' dwellings, see the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 74, substituted for s. 11 of the Housing of the Working Classes Act, 1885. As to the meaning of "working classes" in that enactment, see the S. L. A., 1890, s. 18.

As to leases or grants for longer terms or in perpetuity.

By the S. L. A., 1882, s. 10, the Court is empowered where the custom of any district so requires, or there would otherwise be a difficulty, to authorize the tenant for life either generally or in any particular case to make leases or grants for building or mining purposes of the settled land in that district for any longer term than that authorized by s. 6, or in perpetuity, at fee farm or other rents secured by condition of re-entry or otherwise. For forms extending the statutory power in this respect see *infra*. By the S. L. A., 1890, s. 9, it is enacted that where, on a grant for building purposes by a tenant for life, the land is expressed to be conveyed in fee simple with or subject to a reservation thereout of a perpetual rent or rent-charge, the reservation shall operate to create a rent-charge in fee simple issuing out of the land within six calr months from the date of the lease (*b*), so as there be reserved on every such lease the best yrly rent or rents that can be reasbly obtd [witht takg anythg in the nature of a fine or prem,] [*or*, havg regard, &c., *as in form* L.], but so that durg the first three yrs of any such term a peppercorn rent, or rent smaller than that payable durg the residue of such term, may be reserved: And so as there be contd in every such lease a condon of re-entry for non-paymt within a reasble time to be thrin specified of the rent or rents thby reserved, & so as the lessee or lessees do exte a counterpt thof, & do thby covt for the due paymt of the rent or rents thby reserved, but so that the exon of the lease by the lessor or lessors shl be conclusive evidce in favour of all psons claimg under the lessee or lessees of the due exon of such counterpt.

Power to grant mining leases.

Variation for reversionary leases (*d*).

LIII. AND ALSO (*c*) to demise all or any of the mines, quarries, stones, minls, & substces in, under, or upon any of the lands hby settled, eir with or witht the surface of such lands or any pt thof, & eir with or witht any messes, bldgs, lands, easemts, or hds convenient to be held with the same

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conveyed, and having incidental thereto all powers and remedies for recovery thereof conferred by s. 44 of the C. A., 1881, and the rent-charge so created shall go and remain to the uses, &c., which immediately before the conveyance were subsisting with respect to the land out of which it is reserved; see as to this, Vol. I., p. 562, note.

As to covenant to build.

A building lease under the ordinary express or statutory power is bad without a covenant to build, and if bad as a building lease cannot be valid as an ordinary lease, *Hallett* to *Martin*, 24 Ch. D. 624.

As to the appropriation of land for roads, &c., see s. 16, and *infra*, 623.

As to relying on the Act.

These leasing powers, coupled with the powers of s. 16, as to laying out roads, &c., appear to be sufficient, except where leases for longer terms or grants in fee on chief rent are customary or may be required; and except that it may in some cases be desirable to exclude the restrictions of s. 8, sub-s. 3.

Variation for reversionary leases.

(*b*) If reversionary leases are authorized, insert here, "or for any term of yrs, to commce on the expiron of any then existg lease of the hds & premes comprd in such revy lease, & to cease at any time not later than ninety-nine yrs from the commcemt of the revy lease."

(*c*) See above, p. 617, note (*e*).

Power to grant mining leases under S. L. Acts.

(*d*) A tenant for life under the Settled Land Act, 1882, may by s. 6 grant mining leases, including leases of easements or other rights or privileges over the settled land, for any term not exceeding sixty years. As to the general provisions of the Act applicable to mining as well as other leases, see p. 614, note (*c*).

Meaning

By s. 2 (10) (iv.) a "mining lease" is a lease for mining purposes or purposes resply, & whether the same shl or shl not have been prevsly opened or worked, for any term of yrs not exceedg sixty yrs, to take effect in posson, or within six calr months from the date of the lease (*a*), with such liberties, licences, & powers for searchg for, workg, gettg, washg, smeltg, & makg merchantable the sd mines, quarries, stones, minls, & substces as to the pson or psons exercisg this psnt power shl seem pper, & to insert in

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of mining lease.

connected therewith, and includes a grant or licence for mining purposes; and "mining purposes" include the sinking and searching for, winning, working, getting, making merchantable, converting and disposing of, &c., mines and minerals in or under the settled land or any other land, and the erection of buildings and execution of works; and "mines and minerals" include all minerals and substances in, on or under the land, whether obtainable by underground or surface working, and whether already opened or in work or not.

As to rent, &c.

By s. 2 (10) (ii.) rent includes yearly or other rents and tolls, duties, royalties, or other reservations by the acre, or the ton, or otherwise; and payment includes delivery. By s. 9 (as extended by the Act of 1890, s. 8) in a mining lease the rent may be according to the acreage worked or the quantities of any minerals gotten, made merchantable, converted, or disposed of, in or from the settled land or any other land, or any facilities given in that behalf, or may vary according to the price or value of the minerals gotten, or any of them (and such price may be (1) the saleable value; (2) the price in any trade or market price list; (3) determined in the manner prescribed by the lease; or (4) an average price during a specified period); a fixed or minimum rent may be reserved, with or without an average clause; and a lease may be made partly in consideration of the lessee having executed or agreeing to execute an improvement authorized by the Act (s. 25) for mining purposes.

As to lease of minerals apart from surface, &c.

By s. 17 a mining lease may be either of land with or without an exception or reservation of all or any of the mines and minerals, or of any mines and minerals, and with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, and rights for mining purposes in relation to the settled land or any other land.

Application of rent.

By s. 11 (unless a contrary intention is expressed, as to which see *Re Duke of Newcastle*, 24 Ch. D. 129), three-fourths of the rent where the tenant for life is impeachable for waste in respect of minerals and otherwise one fourth part thereof is to be set aside as capital, and the residue applied as rents and profits. This does not apply to a mining lease for giving effect to a contract entered into by a predecessor who was absolute owner; *Re Kemeys-Tynte*, [1892] 2 Ch. 211. A tenant for life of the proceeds of a sale under a trust for sale and entitled to the rents till sale must set aside three fourth parts of the mineral rents under a lease of unopened mines; *Re Ridge*, 31 Ch. D. 504.

As to the power of the Court to authorize leases or grants for longer terms or in perpetuity for mining purposes, see s. 10, p. 618, note.

Variation for reversionary leases.

(*a*) If reversionary leases are authorized, insert here, "or for any term of yrs to commce on the expiron of any then existg lease of the hds & premes comprd in such revy or extended lease, & to cease at any time not later than sixty yrs from the commcemt of such last-mentd lease."

any such lease powers of instroke & outstroke, & an average clause enablg short workgs in any one yr to be made up in the follg yr or yrs witht paying any royalty for the same, & power to refer disputes arisg thrunder to arbitron, & any other clauses or provons wch may appear to the pson or psons exercisg this power to be necy or pper, but so that there be reserved on every such lease the best rent or rents, renders, royalties, & reservons by the ton, acre, or orwise, & if thought pper variable in amt accdg to the minls or substces actually got or made merchantable or sold, or the acreage worked, [witht takg anythg in the nature of a fine or premium,] [*or*, havg regard, &c., *as in form* L.], & so as there be contd in every such lease a condon of re-entry for non-paymt or non-delivery, within reasble times to be thrin specified, of the rent or rents, renders, royalties, & reservons thby reserved, & so as the lessee or lessees do exte a counterpt thof, & do thby covt for the due paymt or delivery of the rents, renders, royalties, & reservons thby reserved, [but so that the exon of the lease, &c., *as in last form*].

Power to grant leases of easements (*b*).

LIV. AND ALSO (*c*) to grt way-leaves, water-leaves, & other easemts, rts, or privileges of any nature over the hds & premes hby settled, or any pt thof, for any term of yrs not exceedg ninety-nine yrs, to take effect in posson, or within six calr months from the date of the grt (*d*), upon such condons as may be thought pper, [but so that nothg in the nature of a fine or premium be taken for the same,] [*or*, havg regard to any fine or premium, &c., *as in form* L.].

Power to accept surrenders of leases,

LV. AND ALSO (*c*) to make allowces to, & arrangemts with tenants, & to condone, and to grant licenses to commit, breaches of covnt, & to accept a surrender of any lease or tenancy for the

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As to leases of easements under S. L. A.

(*b*) Leases of easements may be granted under the S. L. A., 1882, s. 6, for a term not exceeding ninety-nine years for a building lease, sixty years for a mining lease, and twenty-one years in the case of any other lease; see also as to easements in connection with mining purposes, s. 17, p. 620, note.

(*c*) See p. 617, note (*e*).

Variation for reversionary leases.

(*d*) If reversionary leases are authorized insert here, "or for any term of yrs to commce on the expiron of any then existg lease of such easemt, rt or privilege, or of the hds over wch the same is grted by such revy or extended lease, & to cease at any time not later than ninety-nine yrs from the commcemt of such last-mentd lease."

and to take value of surrendered lease into account on granting a renewal (*a*).

time being affectg the whole or any pt of the hds & premes hby settled, & so that if any lease shl be grted under any of the powers hinbfe contd on the surrender of a then existg or prior lease or tenancy, the value of the intt surrendered or the tenant-rt or claim to compenson for improvemts or orwise in respt of such lease or tenancy, may be taken into acct in fixg the rent & other terms of the new lease.

Power to make grants in fee on chief rent for building purposes (*b*).

LVI. AND ALSO (*c*) to grt in fee simple any pt or pts of the sd hds & premes hby settled to any pson or psons who shl erect any new bldgs thron, or rebuild, repair, or improve any then existg bldg thron, or in any other mner substantially improve the same, & permanently improve the value thof, or shl covt or agree so to do within such a specified time after the date of the grt as shl in each case be deemed reasble, togr with any such liberties, powers, easemts, & rts, & subjt to any such exceptions, reservons, restrons, obligons, covts, & condons as the pson or psons exercisg this power shl think expedient, so as in any such grt there be reserved & made payable in perpetuity out of the premes thby grted, to such uses upon such trusts & subjt to such powers & provons as the premes thby grted would have stood limd & subjt to under these psnts if such grt had not been

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Powers of Settled Land Act as to surrenders of leases.

(*a*) The S. L. A., 1882, by s. 13, gives to the tenant for life power to accept, with or without consideration, a surrender of any lease in respect of the whole or any part of the land leased, with or without an exception of all or any of the mines and minerals, or in respect of mines and minerals, or any of them; and on a surrender of part only of the land or mines and minerals leased to apportion the rent; and to make a new lease of the land or mines and minerals surrendered, or of any part thereof, which may comprise additional land or mines and minerals, and may reserve any apportioned or other rent; and the value of the lessee's interest in the lease surrendered may be taken into account in determining the amount of the rent, and of any fine, and the covenants and provisions of the new lease; but the new lease must be in conformity with the Act.

Provisions of Agricultural Holdings Act.

The Agricultural Holdings (England) Act, 1883, s. 43, makes it unnecessary in making a lease to an existing tenant under a power requiring the best rent to be reserved to take into account against the tenant the increase in the value of the holding arising from improvements made by him.

As to the liability to an outgoing tenant for improvements as between tenant for life and remainderman, see *Mansel* v. *Norton*, 22 Ch. D. 769.

(*b*) This power, which would often be required in some districts, such as Manchester, is not given by the S. L. A., 1882, without an order of Court (see s. 10, p. 618, note). The S. L. A., 1890, s. 9, does not affect this restriction, but only defines the effect and operation of such grants when made, and the devolution of the rent-charge, see p. 618, note.

(*c*) See p. 617, note (*e*).

made, the best yrly rent or rents eir uniform or not wch can be reasbly obtd [witht takg anythg in the nature of a fine or premium], [*or*, havg regard to any fine or premium wch may be taken, & so that any fine or premium shl be pd, &c., *as in form* L.] & so that a peppercorn or other nominal rent may be made payable durg all or any pt of the first five years [& so as there be contd in every such grt a power of entry & rect of rents & profits in case of non-paymt within a reasble time, to be thrin specified, of the rent or rents thby reserved (*d*)], & so as every grantee do exte a duplicate or counterpt of the grt, & do thby covt for the due paymt of the rent or rents thby reserved; AND ALSO to grt in fee simple to any pson or psons who shl be entled to any land under any such grt, any addonal plot or plots of land of not greater yrly value than £—— in each case, adjoing or contiguous to the land to wch such pson or psons shl be so entled as afsd, & suitable to be held thwith or with any bldg thron, as a garden, pleasure ground, or other accomodon or convenice, witht requirg the grantee to build upon or orwise improve such addonal plot of land, so that the rent to be reserved in every such grt of an addonal plot of land shl be made payable not only out of such addonal plot, but also out of the land to wch the same shl be adjoing or contiguous as afsd, & the bldgs thron, & so that in all respts save as afsd, every such grt of an addonal plot of land shl be made subjt to the same condons as a grt under the power lastly hinbfe contd; AND FURTHER, that the pson or psons for the time being entled as afsd, may accept & take reconvces of any hds wch shl have been grted in exercise of the sd power, such reconvces to be made to enure to the uses, upon the trusts, & subjt to the powers & provons hby decld & contd concerng the hds to be reconveyed.

And to grant adjoining plots as gardens, &c.

To take reconveyances.

LVII. AND ALSO (*f*) to appropriate & lay out, or to authorize the lessee or lessees, or grtee or grtees in any lease or grt in fee made under any of the powers of these psnts or the Settled

Power to lay out property for building (*e*).

(*d*) The part in this bracket may be omitted, see the C. A., 1881, s. 44; S. L. A., 1890, s. 9.

(*e*) The S. L. A., 1882, s. 16, provides that on or in connection with a sale or grant for building purposes or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or any part thereof (i.) may cause or require any parts of the land to be appropriated and laid out for

Provisions of S. L. A. as to laying out roads, &c.

(*f*) See p. 617, note (*e*).

Land Acts, 1882 to 1890, to appropriate & lay out any pt or pts of the hds & premes hby settled [other than & except, &c.,] as sites for, & to erect, build, & make thron at the cost of the trust este, or to authorize any such lessee or lessees as afsd, to erect, build, & make thron, any churches, chapels, schools, houses, or other bldgs, parks, squares, gardens, or other open spaces, roads, paths, sewers, drains, water-courses, water-works, water-pipes, gas-works, gas-pipes, electric power or light works, or any other works wch may tend to the adapton, improvemt, or developmt of the hds hby settled, or any pt or pts thof, as a bldg este, & eir to dedicate the same to the public or to convey or demise the same in fee simple or for any term of yrs to any corporon or public body or authority for any pposes for wch they are or may be authorized to accept the same, or to any psons as trees upon any trusts to be decld concerng the same for the public or for the residents on or lessees of the hds & premes hby settled, or any pt or pts thof, or the residents on or owners of any adjoing ppty, or to demise the same to any such lessee or lessees as afsd, & so that any such convce or demise may be made eir gratuitously or for such conson in

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streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connection therewith, and (ii.) may provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trust or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and (iii.) may execute any general or other deed necessary or proper for giving effect to the above provisions (which may be enrolled in the central office of the Supreme Court), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

As to extending statutory powers.

These statutory powers are probably sufficient for ordinary purposes, but the clause in the text extends to other matters not provided for by the Act. It seems that any expenditure in making roads, &c., in connection with the conversion of the land into building land, being among the improvements specified in the S. L. A., 1882, s. 25 (xvii.) could not be made under the Act except in accordance with s. 26; but this expenditure is authorized by the clause in the text.

The power in the text may be extended to other matters provided for by clause XCV., p. 643; and may be given to the donee of the statutory powers by way of extension of such powers, see p. 571, note, and form XCI.

moy, eir in gross to be reced by the sd trees or tree, & applied as if the same had arisen from a sale of the sd premes, or by way of rent to be reced by the pson or psons for the time being entled to the rents & profits of the sd premes, or in land, easemts, rts, or hds to be conveyed or assured to the uses or upon the trusts of these psnts as if the same had been pchased with moys arisg from a sale of the sd premes, or orwise to be annexed in enjoymt to the hds for the time being settled to the uses of these psnts, or some pt or pts thof, or ptly for one or ptly for any other of such consons, & with such reservons & restrons & genlly upon such terms as the pson or psons exercisg this power shl think fit.

Power to release covenants in a lease or grant in fee at a chief rent (*a*) and to apportion rents or rent-charges.

LVIII. AND ALSO at any time by deed eir with or witht conson in moy or orwise to rele, waive, or modify eir absolutely or orwise any covts, provons, or condons contd in any instrumt creatg a freehd or leasehd rent-chge or in a lease, if eir such rent-chge or the land chged therewith, or if the hds comprd in & demised by such lease, shl eir durg the term thby grted or in revon expectant on the determon of such term be subjt to the then subsistg uses or trusts of these psnts & to rele eir wholly or partially any such rent-chge or the rent reserved by any such lease & to agree for the apportionmt of any such rent-chge or rent so that each apportioned pt thof shl thenceforth be payable exclusively out of or in respt of pt of the hds subjt thto & so that the costs, powers or remedies for securg such rent-chge or rent shl be apportioned & made applicable exclusively to the sevl pts of the sd hds out of wch the sd apportioned pts are thenceforth to be payable. AND ALSO to make such provons in any grt at a rent-chge or in any lease for the apportionmt of the rent-chge or rent thby reserved & for releasg waivg or modifyg covts provons or condons contd in any instrumt creatg a freehd or leasehd rent or in a lease, or releasg or apportiong rent-chges or rents, as may be thought fit. AND IT IS HBY AGRD that any gross sum of moy formg the whole or any pt of the conson for any such rele, waiver, modificon or apportionmt as afsd

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As to power to release building covenants.

(*a*) Where in the case of a lease or grant in fee under a statutory (see S. L. A., 1882, s. 10; S. L. A., 1890, s. 9) or other power the building covenants form part of the consideration for and are necessary to the validity of the lease or grant (see *Hallett* to *Martin*, 24 Ch. D. 624); they could not of course be validly released except under a power in the settlement.

shl be pd to the sd trees or tree & shl be held by them or him upon & for the same trusts & pposes as if it had been capl moys arisg from a sale of the hds hby settled so that the same shl be deemed, *continue as at* p. 571, *note*, & that any rent-chge or rent formg the whole or pt of such conson wch shl not be incident to the revon in any hds for the time being subjt to the uses or trusts of this settlemt shl be assured upon with & subjt to such of the uses, trusts, powers & provons hrin decld concerng the freehd hds hby settled as shl be subsistg & capable of takg effect, but so that any leasehd rent-chge shl not vest absolutely in any pson hby made tenant in tail [male or in tail] by pchase unless he [or she] shl attn the age of twenty-one yrs, but on his [or her] death under that age shl go & devolve as if the same had been freehds of inhance hby settled.

Power to enter into contracts for leases, &c. (*a*).

LIX. AND ALSO (*b*) to enter into, alter, vary, & rescind agrmts for or in relon to the exercise of the sevl powers hinbfe contd of leasg [& makg grts in fee of] the hds & premes hby settled, [or of easemts & other rts over the same,] & to agree for the apportionmt of an entire rent betn different pts of the ppty to be leased [or grted,] & so that, on such apportionmt being made, the requiremt that the best yrly rent or rents be reserved [havg regard to any fine or premium taken] as afsd shl apply to the aggregate of the rents reserved by the leases or grts, & not to the rent reserved by any one lease or grt, but no lease to be grted in psuance of any such agrmt shl be grted for a longer term than could have been grted if such lease had been grted at the date of such agrmt.

Power to accept leases of easements (*c*).

LX. AND ALSO (*b*) to accept leases of any lands or hds, or of easemts, rts, or privileges of any nature to be held with or annexed in enjoymt to the hds & premes hby settled, or for the time being subjt to the subsistg uses or trusts of these psnts, or any pt thof, for such periods or duron, & upon such terms & condons as the pson or psons exercisg this psnt power shl think fit, & so that any such lease shl be grted to the sd trees or tree, or if grted to any other pson or psons, shl be assned to the sd trees or tree, & the premes thrin comprd shl, so far as the

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(*a*) As to the powers given by the S. L. A., 1882, of entering into, varying and rescinding contracts, see s. 31.

(*b*) See p. 617, note (*e*).

(*c*) This power, which is not given by the S. L. A., 1882, may be occasionally useful on mining estates.

tenure or nature thof will admit, be subjt to the same uses, trusts, powers, & provons as the hds with or in connon with wch the same shl be held, except that the same shl be subjt to the like provons as to the absolute vestg & devolon thof as the hds held by leases for yrs hby settled [to be pchased with moys arisg from a sale of the hds hby settled]; And the rents reserved by any such lease shl be pd, & the pson or psons in whose name or names such lease shl be taken shl be indemnified in respt of such rents & the covts thrin contd, out of the rents & profits of the premes hby settled, or for the time being subjt as afsd.

Power to grant licences to copyholders (d).

LXI. AND ALSO (*e*) to grt to any copyholder or customary tenant of any manor for the time being subjt to the subsistg uses of these psnts, licence in writg to build upon or orwise improve his tenemt, or any pt of the waste of the sd manor, & to make roads or streets in, through, or upon the same, & to annex the same or any pt thof to adjacent ground for the ppose of improvemt, & to pull down any of the messes or bldgs wch now are or hrafter shl be on such tenemt, & to demise all or any pt of such tenemt or of such waste for any term of yrs not exceedg twenty-one yrs, or for bldg, improvg, or repairg pposes, not exceedg [ninety-nine] yrs, to commce from or within six calr months from the grantg of such licence, or for any one or more of the pposes afsd: And also to fix the annl value durg the term mentd in such licence, whron fines, fees, & other annl paymts are to be assessed, or the amt of such fines, fees, or paymts, & so that every such licence shl be entered on the court rolls of the manor.

Commencement of powers of sale and exchange, enfranchisement, partition, &c., in an

LXII. AND IT IS HBY AGRD that it shl be lful for the sd, *trees*, or the [survors or] survor of them, durg the life of the sd ——, with his consent in writg, & after his dece, & durg the minority of any pson who, if of full age, wd for the time being be entled to the posson or rect of the rents & profits of the hds & premes hby settled [or of any undivided share or shares

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Power in S. L. A. to grant licences to copyholders.

(*d*) A tenant for life under the S. L. A., 1882, may by s. 14 grant to a copyholder a licence to make such lease as the tenant for life is by the Act enabled to grant of freeholds; the licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amounts of such fines, fees, or payments, and is to be entered on the court rolls.

(*e*) See p. 617, note (*e*).

ordinary strict settlement on marriage (*a*).

thof (*b*)] at the discron of the sd trees or tree for the time being, to, &c. (*c*).

Powers of sale, enfranchisement, exchange, and partition in S. L. Acts.

(*a*) By the S. L. A., 1882, s. 3, a tenant for life (including any other limited owner having the powers of one) is empowered: — 1. To sell the settled land (which includes incorporeal hereditaments, see s. 2) or any easement right or privilege over or in relation to the same. This it is conceived not only authorizes the creation by way of sale of any easement or right over the settled land for the benefit of adjoining land, but also the release, by way of sale, of an existing easement or right over adjoining land held with and forming part of the settled land. 2. Where the settlement comprises a manor, to sell the seigniory of any freehold land or enfranchise any copyhold or customary land within the manor, with or without an exception, or reservation of all or any of the minerals, or any rights relative to mining purposes. An enfranchisement may be made with or without a re-grant of any right of common or other right or easement. 3. To exchange the settled land for other land. Land in England is not to be exchanged for land out of England. 4. Where the settlement comprises an undivided share or under the settlement the land has come to be held in undivided shares, to concur in making partition; and money may be paid or received for equality of exchange or partition. By s. 18, any money so required may be raised by the tenant for life by mortgage.

Subsidiary provisions.

By s. 4, the sale must be at the best price and the exchange or partition for the best consideration in land or in land and money that can reasonably be obtained; and the Act gives the usual subsidiary powers; and on a sale, exchange, or partition authorizes the making of reservations or imposition of restrictions "with respect to building on or other user of land, or mines or minerals, or the more beneficial working thereof, or any other thing, to be made binding by covenant, condition, or otherwise on the tenant for life and the settled land or any part thereof, or on the other party and any land sold or given in exchange or on partition to him."

As to sales, &c., of surface and minerals apart.

By s. 17, a sale, exchange, or partition may be made of land with an exception or reservation of all or any of the mines and minerals, or *vice versâ*, and with or without a grant or reservation of powers of working, wayleaves, or other easements or rights for or connected with mining purposes in relation to the settled land or any other land. Under the previous law this could not be done without an express power or the sanction of the Court, which can now be obtained under the T. A., 1893, s. 44 (as amended by the T. A., 1894, s. 3), or the Settled Estates Act, 1877, s. 19.

As to easements.

Although the power of creating easements and other rights conferred by s. 17 is confined to mining purposes, a wider power for that purpose in the case of sales is conferred by s. 3; and by the Act of 1890, s. 5, an equally wide power is given on an exchange or partition.

As to incumbrances.

Power is also given on a sale, exchange, or partition to shift incumbrances,

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(*b*) The words in brackets to be inserted where there is a limitation to tenants in common. See the provision in form LXXVI., as to this case.

(*c*) If there are several powers given to the trustees, it may be convenient to continue as follows, "to exercise the powers follg (that is to say), FIRST, a power to, &c.; SECONDLY, a power, &c."

The same where there are

LXIII. AND IT IS HBY AGRD, that it shl be lful for the sd, *trees*, or the [survors or] survor of them, durg the life of any pson (*d*)

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with the consent of the incumbrancer, to other parts of the settled land, s. 5, and see s. 24 (4, 5, 6).

As to mansion, &c.

By s. 10 of the Amending Act of 1890 (substituted for s. 15 of the original Act) the principal mansion-house and the lands usually occupied therewith are not to be sold or exchanged without the consent of the trustees or an order of Court; see Vol. I., p. 471, note.

As to undivided share.

By the S. L. A., 1882, s. 19, the tenant for life of an undivided share may concur with the owner of or person having power of disposition over any other undivided share for any purposes of the Act; see Vol. I., p. 470, note.

As to conveyances.

The tenant for life is by s. 20 invested with full powers of executing conveyances to effect any sale or other disposition: see Vol. I., p. 471, note.

Laying out roads, &c.

As to laying out roads, &c., on a sale for building purposes, see s. 16, and p. 623, note (*e*).

As to the investment of sale or other capital moneys, see Vol. I., p. 473, note.

As to contracts.

Power is given by s. 31 to a tenant for life to enter into, vary, and rescind contracts for any of the purposes of the Act, which are to be binding on and enure for the benefit of his successors in title.

As to the general provisions of the Act, see Vol. I., p. 467, note; above, p. 570, note; as to the inutility of inserting express powers which would be merely concurrent with the statutory powers, and as to extending the statutory powers, see p. 572, note. The consent of the tenant for life is usually required to the exercise of the express powers of sale, &c., which is in accordance with the requirement of s. 56 of the Act.

As to power to sell, &c., for rent-charge.

The Act does not give power to sell or enfranchise for a rent-charge, or to charge a rent for equality on an exchange or partition, which is sometimes given by the settlement; but such a power is seldom wanted, except as to grants at fee-farm rents for building, for which a special power should be given, see p. 622.

Extraordinary tithe rent-charge.

See the Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), s. 6, as to the power of a tenant for life to sell or mortgage for redeeming extraordinary tithe rent-charge.

Artizan dwellings.

As to sales, &c., of land for the erection of dwellings for the working classes, see the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 74, substituted for s. 11 of the Housing of the Working Classes Act, 1885; as to the meaning of "working classes" in that enactment, see the Settled Land Act, 1890, s. 18.

As to sales, &c., to a county council for the purposes of the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), see ss. 12 and 13 of that Act.

As to the repealed provisions of Lord Cranworth's Act relating to powers of sale.

A very short power of sale and exchange was sometimes given in reliance on the provisions of Lord Cranworth's Act (23 & 24 Vict. c. 145), Part I., which supplied the necessary details of the power. These provisions having been repealed by the S. L. A., and no corresponding provisions substituted, this cannot now be done, but the provisions of the latter Act are of course much more efficacious, and where there is occasion, express powers for these and other purposes in a very short form, by reference to that Act, can be inserted, see *infra*, p. 639.

Variation for name and arms clause.

(*d*) Where the form of name and arms clause above, p. 589, is used, say, "any pson of full age for the time being benefly entled under these psnts to the posson or rect of the rents & profits of the various limitations for life and in tail.

who under the limons hinbfe contd, shl for the time being be beneflly entled to the posson or rect of the rents & profits of the hds & premes hby settled as tenant for life with his [or her] consent in writg, & also durg the minority of any pson who, under the limons hinbfe contd, wd, if of full age, be for the time being beneflly entled to the posson or rect of the rents & profits of the same premes [or of any undivided share or shares thof] as [tenant for life or] tenant in tail male [or in tail] by pchase at the discrón of the sd trees or tree for the time being, to, &c. (*a*).

Power to sell or exchange (*b*).

LXIV. TO SELL or exchange for other manors, messes, lands, tenemts, or hds situate in England or Wales, all or any pt of the hds hby settled, & upon any such exchange to give or rece moy eir in gross, or by way of rent for equality of exchange.

Power to partition (*c*).

LXV. AND ALSO (*d*) to concur with the pson or psons for the time being seised of, or entled to, or havg power in that behalf over or in relon to the other undivided share or shares of or in any hds of wch an undivided share or shares is or are hby settled, in makg a parton of the same hds, or any pt thof [& that notwg that any of the sd trees, or a sole tree, may be entled to, or intted in, any share or shares of or in the same, (*e*)] & to give or rece moy eir in gross or by way of rent for equality of parton.

Power to sell, &c., surface

LXVI. AND ALSO to make any such sale, or exchange, [or parton] as afsd, of the surface only of any such hds apart from

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hds hby settled for any legal or equitable este of freehd by pchase, with his or her consent in writg, & durg the minority of any pson who if of full age wd be entled as afsd, at the discron of the sd trees or tree for the time being, to, &c.

(*a*) See p. 628, note (*c*).

(*b*) For the remaining clauses of the full power of sale and exchange, see forms LXVI., LXX., LXXIII., and LXXVI. to LXXX., some of which are, of course, exceptional. As to the statutory power, see p. 628, note.

(*c*) For the remaining clauses of the power to partition, see forms LXVI., LXXIII., LXXVI., LXXVII., LXXIX., and LXXX. As to the statutory power, see p. 628, note.

(*d*) If it should be necessary to make a new commencement in any of the powers given to the trustees, say, "AND IT IS HBY FURTHER AGRD that it shl be lful for the sd, *trees*, or the [survors or] survor of them, or the exs or ads of such survor, with such consent or at such discron as afsd, &c."

(*e*) See p. 500, note (*e*).

& witht the mines & minls, or any of the mines & minls in, under, or upon the same, or of such mines & minls or any of them apart from & witht the surface of such hds, & with or witht a reservon or grt of any rts of searchg for, gettg, workg, carryg away, & disposg of the same mines & minls, & any other rts or easemts incidental thto. and minerals separately (*f*).

LXVII. AND ALSO to make any such sale as afsd in conson wholly or partially of a perpetual yrly chief rent or rent-chge payable yrly or half yrly to be reserved out of or chged upon the hds so sold or any pt thof or any other hds of freehd, copyhd, or customary tenure in England or Wales, & to be limd to the uses upon the trusts & subjt to the powers & provons to, upon & subjt to wch the premes sold were limd immedly bfe the sale thof, so far as the same may be applicable. Power to sell for chief rents (*g*).

LXVIII. AND ALSO eir at the time of or previously to any such sale to enter into any covts or arrangemts, or to cause any pchaser to enter into any covts or arrangemts, restrictive of erectg bldgs or regulatg the position or value of bldgs to be erected on the hds hby settled or any pt thof, or orwise restrictive of the user of any such hds, or any bldgs for the time being thron, whether sold or intd to be sold or not, or in respt of makg, repairg, or maintaing roads, sewers, or fences, or other like mres, or any other arrangemts wch may be deemed expedient for adaptg or developg the sd hds or any pt thof as a bldg este. Special power as to building land (*h*).

LXIX. AND ALSO to enfranchise (*k*) any copyhd or customary tenemt holden of any manor hby settled, with or witht a regrt of all or any of the rts of common, & other rts, liberties, or privileges appendant or appurtenant to or held or enjoyed with Power of enfranchisement in settlement of a manor (*i*).

(*f*) See as to this, p. 628, note.

(*g*) See p. 629, note, and compare the fuller form of power to make grants on fee-farm rents at p. 622.

(*h*) This is provided for in case of a sale under the S. L. A., 1882, by s. 4 (6) of the Act; see p. 628, note.

(*i*) Where an undivided share of a manor is settled, say, "or concur in enfranchisg," and "any manor an undivided share or shares of wch is or are hby settled."

(*k*) For the remaining clauses of the power of enfranchisement, see forms LXXIII., and LXXVI. to LXXX. As to the statutory power, see p. 628, note; and as to compulsory enfranchisement at the option of either lord or tenant, see the Copyhold Act, 1894; and especially ss. 43 and 44 as to the powers of limited such tenemt, & with or witht a reservon of all or any of the mines & minls thrunder, or any other reservons, for such conson in moy, eir in gross, or by way of rent, or for such conson in land, or ptly for one & ptly for anr or others of such consons & in such mner as the sd trees or tree shl think fit.

Power to grant easements (*a*).

LXX. AND ALSO to grt or create any easemts or other rts or privileges of any nature over or in relon to the hds hby settled or any pt thof for such conson in moy eir in gross or by way of rent or for such conson in land, or the grt or creation of an easemt or other rt or privilege over or in relon to land, to be annexed in enjoymt to the hds hby settled or any pt thof, or ptly for one & ptly for anor or others of such consons, & genlly upon such terms & in such mner as the sd trees or tree shall think fit.

Power to purchase easements (*b*).

LXXI. AND ALSO to pchase or accept any easemt or other rt or privilege of any nature over land to be annexed in enjoymt to the hds hby settled or any pt thof, for such conson in moy eir in gross or by way of rent, or for such conson in land or the grt of an easemt or other rt or privilege over the hds hby settled, or any pt thof, or ptly for one & ptly for anor or others of such consons & genlly upon such terms & in such mner as the sd trees or tree shl think fit.

Power to release easements, &c. (*bb*).

LXXII. AND ALSO power to rele any easemt or restrictive covt or condon or other rt over or affectg any other land eir gratuitously or for such conson in land or any easemt or rt over land or in moy & genlly upon such terms as may be thought fit.

Power to sell, &c., subject to conditions (*c*).

LXXIII. AND TO make any such sale as afsd, eir by public auction or private contract, & to make or agree to any stipulons

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owners and trustees, and s. 37 as to charging the lord's expenses on lands settled to the same uses as the manor.

(*a*) For the remainder of this power, see forms LXXIII., and LXXVI. to LXXX. See also the corresponding provision in connection with the leasing powers, p. 621. As to the statutory power, see p. 628, note. The power in the text goes beyond that power in authorizing the consideration to be a rent.

(*b*) For the remainder of this power, see forms LXXIII., LXXV., LXXVI., LXXVII., and LXXX. The power to purchase land in the S. L. A., 1882, s. 21 (vii.), extends to easements and other rights over land (and as to mining easements the sub-d. viii.); but does not authorize the consideration to be a rent. As to the creation of easements by way of use, see the C. A., 1881, s. 62.

(*bb*) See S. L. A., 1882, s. 3; S. L. A., 1890, s. 5.

(*c*) This, so far as regards sales, is provided for by the T. A., 1893, s. 13, replacing the C. A., 1881, s. 35.

or provons as to title or evidce or commencemt of title or orwise, in any condons of sale or contract for sale or exchange, [parton or enfranchisemt, or for the grt or acquison or rele of any easemt or other rt or privilege,] & to buy in at any sale by auction, & rescind or vary any contract, & to enter into any new contract for any of the pposes afsd, witht being responsible for loss.

Power to renew leases (*d*).

LXXIV. AND ALSO from time to time to renew any lease or grt of any hds for the time being subjt to the uses or trusts of these psnts, & to pay the fines & expses of such renewal, but witht alterg the equities or obligons of the sevl psons intted as to the mode in wch the same ought ultimately to be pd or borne, & any such renewed lease or grt shl be subjt to the same uses, trusts, powers, & provons as the origl lease or grt.

Power to raise money on mortgage for various purposes (*e*).

LXXV. AND ALSO to raise on mtge of the hds hby settled, or for the time being subjt to the existg uses or trusts of these psnts, or any pt or pts thof, all or any moys wch may be raiseable under the trusts of any term hinbfe limd, or wch may be

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As to power to renew leases.

(*d*) For the remainder of this power, see forms LXXV., LXXVII., and LXXX. By the T. A., 1893 (56 & 57 Vict. c. 53), s. 19, sub-ss. (1) and (2) power is given to trustees of leaseholds renewable either under covenant or contract or by custom or usual practice, and a duty imposed upon them, if required by any beneficiary, of renewing the same and of doing all acts requisite for that purpose, including the surrender of the existing lease, and of paying fines, &c., for renewal out of moneys settled on the same trusts or by mortgage of the leasehold hereditaments or any other hereditaments subject to the same uses and trusts. But where the person in possession for his life or other limited interest is by the terms of the settlement under no obligation to renew or to contribute to the expenses of renewal, his consent in writing must be obtained. This enactment does not affect the rule that the fines and expenses of renewal ought to be borne by the beneficiaries according to their enjoyment of the property, *Re Baring*, [1893] 1 Ch. 61; see as to this 3 Dav. Prec. p. 610. The power may be excluded by the settlement (sub-s. (3)); Ellis on the Act. No such power was given by the S. L. A., 1882. Having regard to the statutory provisions and to renewable leaseholds being much less common than formerly, the special provisions as to them may usually be omitted; see 3 Dav. Prec., p. 605 *et seq.*

As to the statutory powers of mortgaging.

(*e*) For the remainder of this power, see form LXXVII. This is a full power, some parts of which would not usually be applicable; compare form XXXIII., p. 600. The S. L. A., 1882, s. 18, gives the tenant for life power to raise money by mortgage in fee or for a term for enfranchisement or equality of exchange or partition; which is extended by s. 11 of the S. L. A., 1890, to the raising of money by mortgage in fee or for a term for the discharge of incumbrances on the settled land, and the costs (as to the exercise of this power see *Hampden* v. *Earl of Buckinghamshire*, [1893] 2 Ch. 531); and ss. 40 and 54 of the Act of 1882 contain the necessary provisions for the chged or become raiseable by virtue of any of the powers contd in or incident to these psnts or wch may be payable or required [for equality of exchange or parton, or for obtaing the enfranchisemt of any hds of copyhd or customary tenure for the time being subjt to the uses or trusts of these psnts, or] for the pchase or acquison of hds of any tenure or any easemt or other rt or privilege hby or by statute authorized to be pchased or acquired, or wch may be required for the ppose of effectg any of the permanent improvemts hby authorized, [or for the renewal of any lease or grt for the time being subjt to the uses or trusts of these psnts], or for dischging or consolidatg any chges or incumbces affectg any hds of any tenure for the time being subjt to the uses or trusts of these psnts, or wch may orwise be required for any ppose for wch capl moys arisg from a sale of the sd premes are hby or by statute authorized to be expended, [or for the paymt of any expses hrafter to be incurred in or about the exon on the hds hby settled of any works done thron by any pson or corporon actg under the authority of a statute or by any owner or occupier of the hds hby settled psuant to a notice given or order made by any pson or corporon actg as afsd], or for the paymt of any expses incurred by the sd trees or tree in or about the managemt, proton, or preservon of the hds for the time being subjt to the uses or trusts of these psnts, or orwise in the exercise of the trusts or powers of these psnts wch the sd trees or tree shl think fairly chgeable agst the inhance of the sd premes, includg the expses of opposg any applicon to parliamt for any bill or to the Local Governmt Board or other departmt of Governmt for any provonl order or to the Rly Commrs for any order wch the sd trees or tree may consider prejudicial to the sd premes or any pt thof, wch expse they or he are or is hby authorized to incur, & so that no

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protection of the mortgagee; see also as to raising the expenses of enfranchisement, the Copyhold Act, 1894, ss. 36, 37; and as to the renewal of leases, see the last note; and as to the redemption of extraordinary tithe rent-charge, see 49 & 50 Vict. c. 54, s. 6. The words in brackets might usually be omitted in reliance on the statutory provisions; and if the purposes for which capital money may be applied are elsewhere defined, as in form LXXX., p. 636, it would be sufficient in the above form to authorize the raising of money for any purpose for which capital money may be applied. The above power might conveniently be given to the tenant for life by way of extension of the powers conferred by s. 18 of the S. L. A., 1882, and s. 11 of the Act of 1890, so as to have the benefit of s. 57 of the Act of 1882; see p. 571, note.

mtgee advancg moy on a mtge purportg to be made under this psnt power shl be concerned to see that such moy is wanted or that no more than is wanted is raised, & to secure the repaymt of any moys so raised as afsd with intt at such rate as may be thought pper by a mtge for any term of yrs or in fee simple of the hds to be chged thwith, & eir with or witht a power of sale, & with such other powers & provons & upon such terms in all respts as may be deemed expedient.

Power in settlement of an undivided share to concur with co-owners in selling, &c. (*a*).

LXXVI. AND ALSO to concur with the pson or psons for the time being entled to or havg power in that behalf over or in relon to the other undivided pt or share, pts or shares, of any hds of wch an undivided share or shares is or are hby settled, in exercisg all or any of the powers hinbfe contd of sale & exchange, [enfranchisemt & grantg or pchasg or acceptg grts of easemts or other rts] & so that any pchase or conson moys arisg thfrom [or pd in respt thof] & any expses or outgoings may be apportioned after the same shl have been reced, pd, or incurred. [& that notwg that any of the sd trees, or a sole tree, may be entled to or intted in any of the other pts or shares of the same premes (*b*)].

Power to execute assurances, &c. (*c*).

LXXVII. AND ALSO for any of the pposes afsd, by any deed or deeds, to revoke all or any of the uses, trusts, powers, & provons hinbfe limd, decld, & contd, or to be limd or created under any of the powers hinbfe contd of chging jtures [rent-chges] & portions of & concerng the hds & premes comprd in or affected by any such sale, exchange, [enfranchisemt, parton, mtge], or other dealg as afsd, but subjt to every mtge made under the trusts of any term of yrs hinbfe limd, or to be limd or created under any of the powers hinbfe contd, or any statutory power (*d*), & to any mtges or leases [easemts or rts] made or grted under the respive powers hinbfe contd, or any statutory power (*e*), & by the same or any other deed or deeds, to limit or appt any uses, trusts, or estes of the sd premes, or any pt thof, wch may be thought expedient, & genlly for any

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(*a*) As to the exercise of the powers of the S. L. A. in this case, see s. 19. The provision at the end of this clause as to apportionment, &c., is not in the Act.

(*b*) See p. 500, note (*e*).

(*c*) As to the power of executing assurances, &c., given by the S. L. A., 1882, see Vol. I., p. 471, note.

(*d*) This refers to the C. A., 1881, s. 44 (4).

(*e*) This refers to the powers of the S. L. Acts, 1882 to 1890.

such ppose as afsd, to exte & do all such assurces & things as the sd trees or tree shl think fit.

Provision as to exercise of powers of sale, &c., where there is a limitation to tenants in common in tail or in fee (*a*).

LXXVIII. PROVD ALWAYS, & IT IS HBY AGD, that the sevl powers of leasg, makg allowces to & arrangemts with tenants, acceptg surrenders of leases & tenancies, [appropriatg & laying out, or authorizg other psons to appropriate & lay out sites, makg agrmts for leases, acceptg leases, grtg licences to copyholders], & of sale & exchange, [& enfranchisemt, & grtg & pchasg & acceptg grts of & releasg easemts & other rts,] hinbfe contd shl be exerciseable durg the minority of any pson who, under the limons hinbfe contd, wd for the time being, if of full age, be benefly entled to the posson or rect of the rents & profits of any undivided share of the hds hby settled, with the concurrce of the pson or psons of full age (if any), who under such limons shl for the time being be benefly entled to the other undivided share or shares thof, or any of such shares, or who shl orwise have power in that behalf.

Declaration as to application of rents reserved on exchanges, &c.

LXXIX. AND IT IS HBY AGRD that all annl rents wch shl be reserved upon any [sale] exchange, parton, enfranchisemt, grt of any easemt or other rt or approprion (*b*) under the powers hinbfe contd, shl be so reserved & settled that the same shl be reced & enjoyed by the pson or psons who, under the limons hinbfe contd wd, for the time being, be entled to the posson or rect of the rents & profits of the hds hby settled.

Trusts of sale monies, &c. (*c*)

LXXX. AND IT IS HBY AGRD that all capl moys wch shl arise from any such sale or exchange (*d*) as afsd, or any other dealg under the powers of these psnts, shl be reced by the sd trees

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As to leases, sales, &c., where there is a limitation to tenants in common.

(*a*) That powers of this nature are good though not limited as to perpetuity, see 3 Dav. Prec., 482 ; Gray on Perpetuities, 314. This clause would prevent doubt as to the exercise of the powers where one of the tenants in common under the settlement is a minor. Compare the provisions of the S. L. A., 1882, s. 19. The powers might before the Act have been validly made exerciseable over the entirety without the concurrence of the adult tenants in tail (see 3 Dav. Prec. 576), but s. 56 of the Act appears to prevent this. It seems that the trustees could not sell the share of the infant alone under the statutory power, see *Re Collinge*, 36 Ch. D. 516. If the settlement has determined as to all the shares except one, the powers of the S. L. A. may be exercised over that share without the concurrence of the owners of the other shares, *Cooper* v. *Belsey*, 43 Solors. J. 295.

(*b*) See p. 623, form LVII.

As to the investment of

(*c*) Inasmuch as by the S. L. A., 1882, s. 33, all capital moneys of the settlement in the hands of the trustees which are liable to be invested in the purchase of land may, "at the option of" the tenant for life, be invested or or tree, & shl be applied by them or him durg the lifetime of any pson of full age for the time being benefily entled under the limons hinbfe contd to the posson or rect of the rents & profits of the premes hby settled for any legal or equitable este of freehd by pchase by the diron of such pson, & at any other time, or in default of any such diron, at the discron of the sd trees or tree (after paymt of costs & expses) in mner follg, that is to say, in or towards the paymt or dischge of any moy wch may be payable for equality on any exchange (*e*), or in or towards the paymt or dischge of any mtge or incumbce for the time being affectg all or any of the hds of whatever tenure for the time being subjt to the uses or trusts of these psnts, or in the pchase of any freehd, copyhd, customary or leasehd manors, messes, lands, tenemts, or hds to be situate in England or Wales, such copyhd, customary, or leasehd hds being contiguous to or convenient to be held with the hds for the time being, subjt to the uses or trusts of these psnts, or some pt or pts thof, & such leasehd hds havg not less than 60 yrs unexpd at the date of the pchase, or in the pchase of any rents of inhance, constitutg a first chge upon any such freehd, copyhd, or customary hds, or in pchasg the enfranchisemt of any hds of copyhd or customary tenure for the time being subjt to the trusts of these psnts, or if the sd trees or tree in their or his discron shl deem the same to be for the

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applied in any of the modes provided by s. 21 (see Vol. I., p. 473, note) ; and, as the power so given to the tenant for life to direct the investment or application cannot be excluded or controlled by the settlement, it seems useless to insert any trust for investment of capital moneys arising from sales, &c., under the express powers, of a more limited scope than the statutory power. But this may of course be extended ; see *infra*, p. 644, form XCVII. The trust in the text appears to be in conformity with the Act, but it might be shortened by omitting any specific mention of the statutory investments comprised in s. 21.

capital monies of the settlement.

(*d*) Add, if appropriate, " parton, enfranchisemt, grt of any easemt or other rt or approprion ; " see p. 623, form LVII.

Variation for partitions, &c.

(*e*) Add in appropriate cases, " or parton as afsd, or for the pchase of any easemt or other rt or privilege hinbfe authorized to be acquired, or for the fines or expses on the renewal of any lease or grt for the time being subjt to the uses or trusts of these psnts, but witht alterg the equities or obligons of the psons inttd as to the mode in wch such fines or expses ought ultimately to be pd or borne." See p. 633, note.

The like.

permanent benefit & improvemt of the hds for the time being subjt to the uses or trusts of these psnts, or any pt thof, in or towards the paymt of the expses of the approprion & laying out of the sd hds, or of the eron, bldg, or makg of any bldgs or works under the powers hinbfe contd, or in or towards the paymt of the expses of any such permanent improvemts as are hby authorized, or in or upon any stks, funds, or secs in or upon wch trust funds may for the time being be authorized by law to be invested (*a*), [or in or upon, *other investmts*,] or in any other mode in wch capl moys arisg under the S. L. Acts, 1882 to 1890, are authorized to be invested or applied, with power from time to time by such diron or at such discron as afsd to vary or transpose such investmts as afsd into or for others of any nature hby authorized.

Provision for the settlement of hereditaments purchased, &c.

LXXXI. AND IT IS HBY FURTHER AGRD that the hds to be pchased or taken in exchange [or on parton or enfranchisemt] as afsd shl be assured & settled in mner follg, but not so as to increase or multiply chges or powers of chgg (that is to say), as to such of the sd hds as shl be of freehd tenure, to, upon, & subjt to such of the uses, trusts, powers & provons hrin decld & contd concerng the [freehd] hds hby settled as shl be then subsistg or capable of takg effect, & as to such of the sd hds as shl be of copyhd, customary, or leasehd tenure, upon & subjt to such trusts, powers & provons as shl, havg regard to the tenure of the ppty, most nearly correspond with such of the uses, trusts, powers, and provons hinbfe decld & contd concerng the [freehd] hds hby settled as shl be then subsistg or capable of takg effect, but so that any of the sd hds wch shl be of leasehd tenure shl not vest absolutely in any pson hby made tenant in tail [male, or in tail] by pchase, unless he [or she] shl attn the age of twenty-one yrs, but on his [or her] death under that age shl go & devolve as if the same had been freehds of inhance hby settled (*b*): And the annl income arisg

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(*a*) See p. 459, note.

Provision as to renewable leases.

(*b*) If appropriate, insert here, "& so that pper provons shl be inserted in such settlemt for the renewal of any renewable lease or grt, & for raisg the fines & expses of such renewals out of the hds held on such renewable lease or grt, or orwise, but so that the sevl psons inttd may contribute to such fines & expses in from any stks, funds, or secs, in wch any such moys as afsd may be invested, shl be pd or applied to such pson or psons, for such pposes, & in such mner as the rents & profits of the hds to be pchased as afsd wd be payable or applicable if such pchase & settlemt as afsd were actually made.

Clause giving express powers of leasing, sale, &c., by reference to S. L. Acts.

LXXXII. AND IT IS HBY AGRD that it shl be lful for the sd *donee* or *donees* durg the lifetime of the sd A., *or other specified period*, with the consent or concurrce of the pson or psons (if any) whose consent or concurrce may by virtue of the S. L. Acts, 1882 to 1890, or orwise be required in that behalf, to exercise over or in relon to all or any of the hds of whatever tenure for the time being subjt to the subsistg uses or trusts of these psnts all such powers as are by the sd S. L. Acts, 1882 to 1890, conferred upon tenants for life, & so that all the provons of the sd Acts wch are subsidiary or incidental to such powers shl be deemed to apply, & to be incorpd in these psnts as far as circes may admit, subjt nevs to the provons hrin contd; [AND ALSO such addonal or larger powers as are hinafter conferred by way of extension or enlargemt of the powers of the sd Acts to the intent that such addonal or larger powers shl operate & be exerciseable in the like mner & with all the like incidents, effects, & consequces as if the same were conferred by the sd Acts.]

Addition where larger powers are given (*c*).

Declaration that express powers are to operate independently of S. L. Acts (*d*).

LXXXIII. PROVD ALWAYS, & it is hby agrd that in all cases in wch powers & provons are contd in these psnts for the same or the like pposes as the powers conferred by the S. L. Acts, 1882 to 1890, on tenants for life, & the provons incidental thto, the powers hrin contd, whether given to the pson or psons in whom such statutory powers shl for the time being be vested or not, & the provons incidental thto are intd to operate & shl as far as circes admit operate independently of & con-

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the proportions & mode in wch they wd be bound to contribute accdg to the rules of equity." See p. 633, note (*d*).

(*c*) Compare form LXXXVI., p. 640, *infra*.

As to powers concurrent with S. L. Acts.

(*d*) This clause may be added where express powers are inserted, if it should be thought desirable to declare the intention that the powers are to operate concurrently with the statutory powers, under s. 56, and not by way of extension of such powers under s. 57; which however is probably not material. If the statutory powers are relied on, and extended, one or other of the next two clauses should be inserted, see pp. 571, 572, note.

currently with the powers & provons for the same or the like pposes contd in the sd Acts.

Provision as to extension of powers of S. L. Acts (*a*).

LXXXIV. AND IT IS HBY AGRD that all or any powers contd in these psnts for pposes more extended or other than the powers of the S. L. Acts, 1882 to 1890, whether given to the pson or psons in whom such statutory powers shl for the time being be vested or to the sd trees or tree, & all provons subsidiary or incidental to or connected with such respive powers, shl operate & take effect as far as the case may admit by way of extension & enlargemt of the powers & provons of the sd Acts, & with all the like incidents, effects, & consequces as if the same or the like powers with the like incidental provons had been thby conferred upon tenants for life or the trees of the settlemt, as the case may be, but subjt to the provons hrin contd.

The same. Another form (*a*).

LXXXV. AND IT IS HBY AGRD that it shl be lful for the pson or psons (if any) in whom the powers of the S. L. Acts, 1882 to 1890, shl for the time being be vested, in relon to the hds hby settled or for the time being subjt to the subsistg uses or trusts of these psnts, to exercise over or in relon to the same hds & premes the powers hinafter contd, by way of extension or enlargemt, &c., *as in last form.*

Provision for the case of there being no person having the powers of the S. L. Acts (*b*).

LXXXVI. AND IT IS HBY AGRD that in case at any time & so long as durg the subsistce of the psnt settlemt or of any chge of a jture created by these psnts or by the exercise of any power hby given in favour of any pson now livg, or of a portion created by these psnts or by the exercise of any power hby given, wch shl not for the time being be raisable & payable, there shl be no pson in whom the powers of the S. L. Acts, 1882 to 1890, shl for the time being be vested, it shl be lful for the sd trees or tree in their or his absolute discron to exercise over & in relon to the hds hby settled or for the time being subjt to the subsistg uses & trusts of these psnts the powers of a tenant for life in posson under the sd Acts & all

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(*a*) See note (*d*), *supra.*

Provision for statutory powers not being exerciseable.

(*b*) This clause, which should be sometimes inserted where the powers of the Acts are relied on, will meet the case of there being no tenant for life, &c., under the Act, *e.g.*, during the operation of a discretionary trust (see p. 580, note), or the continuance of a jointure or portion charge after the fee has vested in possession, a case which sometimes causes difficulty (see p. 572, note); the duration of the power seems properly restricted so as to keep within the law as to perpetuities.

such extended & enlarged powers as are hby conferred, & so that all the provons of the sd Acts wch are subsidiary or incidental to or connected with the powers thrin contd shl as far as may be apply & take effect with respt to the powers hby given to the sd trees or tree.

Clause extending statutory leasing powers in various respects (*c*).

LXXXVII. AND IT IS HBY AGRD that the leasg powers of the S. L. Acts, 1882 to 1890, shl be exted so as to authorize leases or grts of the hds & premes hby settled for any term, not exceedg for a bldg lease (as defined by the S. L. A., 1882) —— yrs, for a ming lease (as thby defined) —— yrs, & for any other lease, —— yrs & so also as to authorize the grt of bldg leases & enterg into contracts for the same free from all or any of the restrictions imposed by sub-s. 3 of s. 8 of the S. L. Act, 1882. And so as to authorize a bldg or ming lease of any of the sd hds & premes, to be grted for any term of yrs to commce on the expiron of any then existg lease or grt or any future time, & to cease at any time not later for a bldg lease than —— yrs, & for a ming lease than —— yrs from the time of the grtg or makg of such revy or extended lease, & so as to authorize the givg to the lessee or lessees under any such lease as afsd (whether for bldg, ming, occupon or other ppose) an option to pchase the freehd or revon of the premes comprd in the lease or any pt thof at such price whether fixed in the lease or to be determined by valuon or arbitron & to be exercised at such time durg such period not exceedg the duron of the lease & upon such terms & condons as may be thought fit, & so also as in any lease or lettg for agricultural pposes to authorize the reservon of rent payable in advce or in any other mner accdg to the custom of the district & the insertion of such terms & condons as may be so customary.

As to fines on renewal of leases (*d*).

LXXXVIII. AND IT IS HBY AGRD that fines reced on the renewal of any lease of any hds hby settled or for the time being subjt to the subsistg uses or trusts of these psnts wch

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(*c*) See the Act, s. 10, and the preceding notes; as to giving an option of purchase, see the S. L. A., 1889, which is confined to building leases, see p. 618. For a power to make grants on chief rent for building purposes, see p. 622. The clause in the text might be extended so as to include this.

(*d*) Although by the S. L. A., 1884, fines on leases are to be capital, there can be nothing to prevent the rights of the tenant for life from being extended in this respect.

is renewable by contract or custom shl be deemed to be income.

As to mining rents under S. L. Acts (*a*).

LXXXIX. AND IT IS HBY ALSO AGRD that no pt of the rent arisg under any ming lease or grt of any hds for the time being subjt to the uses or trusts of these psnts shl be set aside as capl moy under the S. L. Acts, 1882 to 1890, or orwise, but the whole thof shl go & be reced & applied as rents & profits.

As to sale or lease of mansion-house, &c., under S. L. Acts (*b*).

XC. AND IT IS HBY FURTHER AGRD that —— House afsd being the ppal mansion-house on the sd —— este or any ppal mansion-house or residce for the time being subjt to the uses or trusts of these psnts, & the pleasure-grounds & park & lands usually occupied thwith resply may be sold, exchanged, or leased under the powers of the S. L. Acts, 1882 to 1890, witht the consent of the sd trees or tree, or any order of Ct [& that such mansion-house or residce & premes may be let on lease or orwise with or witht such lands or any of them, & with or witht all or any of the furniture & effects hby settled as heirlooms thwith].

Variation where furniture is settled.

Special powers for a building estate, in extension of S. L. Acts.

XCI. PROVD ALWAYS & it is hby agrd that the powers of the S. L. Acts, 1882 to 1890, shl be extended so as to include a power to grt, *as in form* LVI., p. 622, *& if desired, forms* LVII. *&* LVIII.

Power to raise money on mortgage, in extension of powers of S. L. Acts (*c*).

XCII. PROVD ALWAYS, &c., *as in last form*, a power to raise on mtge of the hds hby settled or for the time being subjt to the subsistg uses or trusts of these psnts, all or any moys wch may be raisable under the trusts of any term hinbfe limd, or wch may be chged or become raisable under any of the powers contd in or incident to these psnts, or wch may be payable or required for the pchase or acquison, &c., *as in form* LXXV., p. 633.

(*a*) See the S. L. A., 1882, s. 11; p. 620, note. As regards compensation money paid by a railway company in respect of minerals under settled estates, it was held in *Re Robinson*, [1891] 3 Ch. 129, that no apportionment can be directed under s. 69 of the Lands Clauses Consolidation Act, 1845, and that a tenant for life, though without impeachment of waste, is not entitled to any part of such money. But the clause in the text might be extended to such compensation money if desired.

(*b*) See the S. L. A., 1890, s. 10, p. 616, note.

(*c*) As to the powers of raising money by mortgage under the Act, see p. 633, note.

Power to sell under S. L. Acts for fee-farm rents (*d*).

XCIII. AND IT IS HBY AGRD that the power of sale conferred by the S. L. Acts, 1882 to 1890, & exerciseable in relon to the hds hby settled shl be extended so as to authorize a sale of all or any of the sd hds, or any easemt, rt, or privilege over or in relon to the same, in conson wholly or partially of a perpetual rent-chge, payable yrly or half-yrly to be secd eir upon the hds comprd in such sale, or on any other (*e*) hds & to be limd to, upon, & subjt to the same uses, trusts, powers, & provons as the sd hds hby settled, or as near thto as the diffce in the nature of the ppty & other circes will admit.

Power to exchange for land in Ireland (*f*).

XCIV. AND IT IS HBY AGRD that any hds hby settled or for the time being subjt to the uses or trusts of these psnts may be exchanged under the S. L. Acts, 1882 to 1890, for hds situate in Ireland.

Power to sell or grant sites for churches, schools, &c. (*g*).

XCV. PROVD ALWAYS & it is hby agrd that the power of sale, &c., *as in form* XCIII., shl be extended so as to authorize a sale or grt for such conson in moy or orwise as may be thought fit or for a nominal conson or gratuitously of any pt or pts of the sd hds eir in fee simple or for a term of yrs absolute or determinable for all or any of the pposes followg (that is to say) as a site for a church, chapel, meetg-house, or other place of religious worship, or for a parsonage-house or residce for a minister of religion with or witht a garden attached thto, or for a parish-room or mission-hall, or for a burial-ground or a schoolhouse or the residce of a schoolmaster or schoolmistress, or playground belongg to a school, or for a public park, playground, or pleasure-ground, drill-hall, rifle-range (*h*), or for a public museum, people's library, town hall, or other public bldg, or for baths, washhouses,

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(*d*) See the Act of 1882, s. 10, and the Act of 1890, s. 9; and as to small agricultural holdings, see the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), s. 13.

(*e*) This may be convenient so as to enable an easement to be sold for a rent to be charged upon the property to which it is to be annexed in enjoyment.

(*f*) See the S. L. A., s. 4 (8).

Acts authorizing grants of sites for churches, schools, &c.

(*g*) Statutory powers authorizing conveyances by limited owners for many of the above purposes, in some cases gratuitously, exist, see *ante*, p. 258, note. Conveyances for some of the purposes mentioned in this clause are subject to the provisions of the Mortmain Acts unless they are made with certain consents or subject to certain conditions; where this is the case a conveyance under this clause must be made with those consents and subject to these conditions unless the provisions of the Mortmain Acts are complied with.

(*h*) See *ante*, p. 262, note.

lecture or readg rooms, & other works of accommodon & convce, or for the ppose of a rly, canal, road, wharves, docks, basin, drain, water-course, or reservoir, or for the site of water-works, gas-works, or works for the supply of electricity [but so that not more than —— acres shl be grted as a site *for, &c., here specify any desired restron*, unless the full conson in moy is pd for the same.]

Power to accept leases of easements, in extension of S. L. Acts (*a*).

XCVI. AND IT IS HBY AGRD that the powers of the S. L. Acts, 1882 to 1890, shl be extended so as to include a power to accept, &c., *as in form* LX., p. 626.

Extension of powers of investment under S. L. Acts (*b*).

XCVII. AND IT IS HBY AGRD that the provons of the S. L. Acts, 1882 to 1890, shl be extended so as to authorize the investmt or applicon of capl moys arisg under these psnts or the sd Acts [in the pchase of leasehd hds held for a term of wch not less than 40 yrs shl be unexpired at the time of pchase, or in the pchase for a term of not less than 40 yrs of mines or minls convenient to be held or worked with the sd hds & premes, or of any easemt, rt, or privilege, convenient to be held

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(*a*) See p. 626, note (*c*).

(*b*) Care must be taken not to insert in this clause any methods of applying capital moneys which are only intended to be adopted with the consent of the trustees, for it will be observed that the tenant for life has the right, S. L. A., 1882, s. 22 (2), to direct that capital money shall be applied in any of the methods authorized by the Act, one of which is (S. L. A., 1882, s. 21), in any mode in which money produced by the exercise of a power of sale in the settlement is exercised thereunder. See the Act of 1882, s. 21, the Act of 1887, and the Act of 1890, ss. 13, 15; and see also, p. 636, form LXXX., and the next form.

As to redemption, &c., of improvement rent-charges out of capital money.

The Act of 1887, which authorizes the application of capital money in the redemption or payment of improvement rent-charges, applies only where the improvement was of a kind authorized by the S. L. Acts (see *Re Newton*, W. N. 1889, 201, 1890, 24; 61 L. T. 787); the provision as to this in the text is not so restricted and would apply, *e.g.*, to a rent-charge created under the Limited Owners' Residences Acts, 1870 and 1871, for improvements to the mansion-house of a nature not covered by s. 25 of the S. L. A., 1882, or s. 13 of the S. L. A., 1890. Capital money may be applied under the Act of 1887 in redeeming a rent-charge by paying not only so much as represents principal, but also of a reasonable sum by way of bonus to compensate the owner of the rent-charge for the loss of interest (*Re Egmont*, 45 Ch. D. 395, disapproving *Re Sudeley*, 37 Ch. D. 123), but not a payment made for reduction of the interest, *Re Verney*, [1898] 1 Ch. 508, on which such rent-charge was calculated; and may also be applied in payment of the instalments of the rent-charge as they accrue due (*Re Howard*, [1892] 2 Ch. 233); but not in recouping to the tenant for life the back instalments (*Re Howard*, *Re Dalison*, [1892] 3 Ch. 522); and the Act applies although the land originally charged has been sold and the rent-charge has been shifted to other parts of the settled estates under the S. L. A., 1882, s. 5 (*Re Howard*). But an order cannot be made, where the thwith] [or in the pchase of freehd or leasehd hds situate in Ireland], [or in the pchase, paymt, dischge, or redmon of any rent-chge or annl sum (whether perpetual or terminable) now or hrafter chged on all or any pt of the sd hds], [or in or upon, &c., *extension of interim powers of investmt, see* pp. 459, *et seq., forms* IV. *to* VIII.].

Extension of provisions of S. L. Acts as to improvements (*c*).

XCVIII. AND IT IS HBY AGRD that any capl moys arisg under these psnts or the exercise of the powers of the S. L. Acts, 1882 to 1890, in relon to the hds & premes hby settled, may, in addon to the other modes of investmt or applicon thof authorized by the sd Acts or these psnts, be applied in or towards paymt of

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trustees have no money in hand, prospectively directing future capital money to be so applied, *Re Bristol*, [1893] 3 Ch. 161.

Improvements under S. L. Acts.

(*c*) See the Act of 1882, ss. 21 (iii.), 25-29, and the Act of 1890, ss. 13 and 15. The improvements specified in s. 25 of the Act of 1882, as extended by the Act of 1890, s. 13, include a wide range; but by s. 26 they cannot be paid for out of capital money until a scheme has been submitted to and approved by the trustees or the Court (unless this is dispensed with by the Court, which it is empowered to do by s. 15 of the Act of 1890); and (if the money is in the hands of the trustees) a certificate of the Board of Agriculture (to whom the functions of the Land Commissioners were transferred by 52 & 53 Vict. c. 30), or an engineer or surveyor nominated by the trustees and approved by the Board or the Court that the work has been properly done, and as to the amount payable, or an order of Court directing or authorizing the application of the money has been obtained, s. 26 (1, 2). Where the money is in Court, the Court is empowered to act on a certificate of the Board or an engineer or otherwise, s. 26 (3). See as to these sections, *Re Houghton Estate*, 30 Ch. D. 102; *Re Broadwater Estate*, 33 W. R. 738; *Clarke* v. *Thornton*, 35 Ch. D. 307; *Re Bulwer Lytton*, 38 Ch. D. 20; *Re Gerard*, [1893] 3 Ch. 252; *Re Gaskell*, [1894] 1 Ch. 485; *Re Tucker*, [1895] 2 Ch. 468; and as to the application of capital money under s. 13 of the Act of 1890 in "additions to and alterations in buildings," with a view to letting (sub-s. ii.); see *Re De Teissier*, [1893] 1 Ch. 153; *Re Gerard*, *ubi sup.; Re Gaskell*, *ubi sup.; Re Tucker*, *ubi sup.;* and in rebuilding the mansion-house (sub-s. iv.), *Re De Teissier*, *Re Gerard*, *Re Walker*, [1894] 1 Ch. 189. An order cannot be made prospectively, where the trustees have no money in hand, for the application of future capital money in improvements; *Re Millard*, [1893] 3 Ch. 116; *Re Bristol*, *ib.* 161. The Court has no power in cases not amounting to salvage to raise money out of a settled estate and apply the money in pulling down and rebuilding houses on the estate, *Re Montagu*, [1897] 2 Ch. 8. See the District Council (Water Supply Facilities) Act, 1897, authorizing a charge on land with the sanction of the Board of Agriculture in favour of a landowner who contributes towards the expenses incurred by a District Council for the purpose of supplying water to the lands of such landowner whether together with other lands or not. As to the erection, completion, and improvement of mansion-houses and buildings appurtenant thereto see also the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), and the Limited Owners Residences Acts, 1870 and 1871 (33 & 34 Vict. c. 56, and 34 & 35 Vict. c. 84). As to applying personalty constructively

Personalty arising

the whole or any pt of the expses of any improvemt of any nature specified in the afsd Acts on any pt of the sd hds & premes, or of any substantial repairs or improvemts of the sd mansion-house, or the outbldgs thof, or any farm or other bldgs for the time being subjt to the uses or trusts of these psnts, or the expses of the approprion or laying out of any pt or pts of the sd hds & premes as sites for & the eron, bldg, makg, and laying out thron of any churches, chapels, schools, or other bldgs, parks, squares, gardens, or other open spaces, roads, streets, paths, sewers, gasworks, gaspipes, electric light works, or any other works wch may tend to the improvemt or developmt of the sd hds, or any pt or pts thof, as a bldg este, or of any other works wch, in the opinion of the sd trees or tree, may be for the permanent improvemt or benefit of the sd hds & premes, & wch expses in the judgmt of the sd trees or tree ought fairly & reasbly to be chged on the inhance of the sd premes, witht the necessity in any case of submittg a formal scheme for the approval of the trees, or obtaing a certfe from any engineer or surveyor in respt of such improvemts or upon the certfe of any engineer or surveyor nominated by the sd trees or tree, whether he shl have been approved or not by

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under different settlement.

subject to the same uses, but arising under a different settlement, in payment for improvements, see *Re Mundy*, [1891] 1 Ch. 399 ; *Re Byng*, [1892] 2 Ch. 219 ; *Re Monson*, [1898] 1 Ch. 427. A constructive trustee who expends money on permanent improvements is *primâ facie* entitled to be recouped to the extent of the improved value, and this is not affected by the fact that he is tenant for life under the constructive trust, *Rowley* v. *Ginnever*, [1897] 2 Ch. 503.

Agricultural Holdings Act, &c.

Capital money may also, by the Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 61), s. 29, be applied for improvements contained in the first and second parts of the Schedule to that Act, or in paying off a charge created for such improvements ; and by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 74 (substituted for s. 11 of 48 & 49 Vict. c. 72) in labourers' cottages and working-class dwellings ; as to the meaning of working classes in that enactment, see the S. L. A., 1890, s. 18.

As to the jurisdiction of the Court apart from statute to sanction repairs and improvements out of capital money, see 3 Dav. Prec., p. 291, note ; *Conway* v. *Fenton*, 40 Ch. D. 512, distinguished in *Re De Teissier*, *ubi sup.*

As to the redemption of improvement rent-charges out of capital money under the S. L. A., 1887, see p. 644, note.

As to the effect of a provision in the settlement for the creation of a sinking fund to recoup to capital an outlay for improvements, see *Re Sudbury*, [1893] 3 Ch. 74.

As to whether a trust to pay for improvements out of income is within the Thellusson Act, see *Vine* v. *Raleigh*, [1891] 2 Ch. 13 ; *Re Mason*, [1891] 3 Ch. 467 ; above, p. 497, note.

the Board of Agriculture or any Ct havg jurisdon under the sd Acts.

Power to tenant for life to charge inheritance with expenses of improvements.

XCIX. AND IT IS HBY AGRD that all or any pt of the expses incurred by any tenant for life under these psnts in effectg any improvemts of any nature specified in the S. L. Acts, 1882 to 1890, on any pt of the sd hds & premes, wch shl be certified by any engineer or surveyor appted by the sd trees or tree to have been pperly expended in that behalf, & wch in the judgmt of the sd trees or tree shl be pperly chgeable on the inhance of the sd premes, shl be so chged togr with intt at the rate of 4 p.c. p.a. from the time of the expenditure thof.

Power to lease to tenant for life (*a*).

C. AND IT IS HBY AGRD that the powers of the S. L. Acts, 1882 to 1890, in relon to the hds hby settled, shl be extended so as to authorize the grt to any tenant for life for the time being hrunder of any such leases of the same hds or any pt or pts thof as wd have been authorized by the sd Acts if such pson had not been tenant for life hrunder, & to the intent that on any such grt the trees hrof shl stand in the place of & represent such tenant for life, & shl in addon to their powers as trees have all the powers of a tenant for life in referce to negotiatg & completg the transon.

Provision requiring tenants for life to keep land in cultivation.

CI. PROVD ALWAYS, & it is hby agrd that the sd, *life-tenant*, [every pson who, under the limons hinbfe contd, shl for the time being be beneflly entled to the posson or rect of the rents & profits of the hds & premes hby settled as tenant for life] shl keep any arable land formg pt of the sd premes wch may for the time being be in his or her occupon clean & in good heart & condon, & that if & so often as such tenant for life shl neglect so to do it shl be lful for, but not obligatory upon, the sd trees or tree to enter upon the same land for the ppose of puttg the same in good heart & condon & cleansg the same, & to retain posson thof so long as shl be deemed necy for such ppose, & to raise & pay all the costs & expses thby incurred out of the rents & profits of the sd premes.

Power to lend capital

CII. AND IT IS HBY AGRD that any capl moys, *&c., as in form* XCVIII., in addon to the other modes of investmt or applicon

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(*a*) Sales to and purchases from a tenant for life, and exchanges and partitions with him, are provided for by s. 12 of the S. L. A., 1890 (see Vol. I., p. 474); but not leases.

money to tenants for life for stocking farms, &c. (*a*).

thof authorized by the sd Act or these psnts, may at the reqt in writg of the sd, *life-tenant*, [any pson who, under the limons hinbfe contd, shl for the time being be beneflly entled to the posson or rect of the rents & profits of the hds & premes hby settled as tenant for life,] if he or she shl be desirous of stockg & cultivatg any arable or pasture land for the time being in his or her occupon, be employed in advancg the whole or any pt of the sum wch in the opinion of the sd trees or tree shl be sufft for that ppose, but so that the repaymt of such sum shl be secd by a mtge of the life intt of such tenant for life in the sd premes, togr with a policy or policies of assurce on his or her life, or by the bond of such tenant for life, or in some other mner to the satisfon of the sd trees or tree, provd that on such land being let to a tenant, or on the death of such tenant for life, it shl be lful for the sd trees or tree, in their or his absolute discrón, if they or he shd be of opinion that the moy so advced has been pperly employed for the pposes afsd absolutely to rele such tenant for life or his or her este from all liability to repay the same or orwise in respt thof: PROVD ALSO, & it is hby agrd that any moy required to be advced for stockg or cultivatg any such land as afsd may be raised by the sd trees or tree by mtge of the sd hds or any pt thof, & so that no mtgee shl be concerned to inquire into the propriety of raisg the same amt required.

Power to raise the money by mortgage.

As to notices under S. L. Acts (*b*).

CIII. AND IT IS HBY AGRD that it shl not be necy for any pson intendg to exercise any powers conferred by the S. L. Acts, 1882 to 1890, in relon to any hds for the time being subjt to the uses or trusts of these psnts to give any notice of such intention to the sd trees or tree or to their or his solor (*c*).

Appointment of trustees

CIV. AND IT IS HBY AGRD that the sd, *trees*, & the [survors or] survor of them or other the trees or tree for the time being

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(*a*) A similar application of trust money has been authorized even in the absence of an express power, *Re Household*, 27 Ch. D. 553. See the power to trustees to carry on and stock farms, *post*, p. 783.

(*b*) See Vol. I., pp. 475, 476, note.

(*c*) Where a life estate under a previous settlement is kept alive, add :—
"AND FURTHER, that such dispenson from the necessity of givg such notice shl be applicable in the case of any exercise of any such powers by the sd A., as tenant for life under the sd settlemt [will] of, &c."

of these psnts shl be & they are hby appted trees of these psnts for the pposes of the S. L. Acts, 1882 to 1890, [& of any

under S. L. Acts (*d*).

(*d*) See the Act of 1882, s. 2 (8), and s. 39 (2), and the Act of 1890, s. 16 ; and Vol. I., p. 473. Where the settlement contains an express power of sale of the settled land, exerciseable by the trustees or with their consent, according to the definition in the Act of 1882, they *ipso facto* become the trustees for the purpose of the Acts, and no other trustees can be appointed for that purpose. It should be borne in mind that the Act of 1890, s. 16, appears not to be of general application, but to be confined to the case where a sale is pending, so that trustees answering the description in that section would not be such for the purpose of a lease or exchange or any other dealing except a sale ; see Vol. I., p. 474. The trustees should also be appointed trustees for the purpose of the minority clause in the C. A., 1881, s. 42, if relied on ; see p. 614, form XLIX.

As to trustees under S. L. Acts.

As to compound settlements, see *ante*, Vol. I., p. 467, note. In the common case of a strict settlement on A. for life with remainder subject to jointures and portions to B. in tail two cases of compound settlement may occur, after a disentail and resettlement and the death of A. If the disentail took place in the lifetime of A., B. has not the statutory powers conferred by the S. L. A. on him as tenant in tail under the original settlement, he is tenant for life of the compound settlement composed of the original settlement, the disentailing deed, and the resettlement, but he cannot exercise his statutory powers under the compound settlement owing to there being no trustees for the purposes of the S. L. A. of the compound settlement. This difficulty may be obviated by inserting in the original settlement the clause following :

Compound settlements.

(A.) "AND IT IS HBY AGRD & DECLD that the psons or pson who shl for the time being be the trees or tree of these psnts for the pposes of the S. L. Acts, 1882 to 1890, shall be the trees or tree for the same pposes of every compound settlemt consistg of these psnts & of any instrumt or instrumts to be executed hrafter."

Appointment of trustees of compound settlements to be inserted in the original settlement.

As every person taking under a resettlement takes subject to the provisions of the earlier settlement it is apprehended that he will be bound by this declaration, but it will be safer to insert in the resettlement the clause following :

(B.) "AND IT IS HBY AGRD & DECLD that the pson or psons who shl for the time being be the trees or tree of the recited indre, dated, &c. [will, &c.] for the pposes of the S. L. Acts, 1882 to 1890, shl be trees or tree for the like pposes of the compound settlemt formed by the sd indre [will] & these psnts."

Appointment of trustees of compound settlements to be inserted in the resettlement.

Where the disentail takes place after the death of A., B. as having been tenant in tail in possession under the original settlement can probably exercise the statutory powers so as to override the family charges conferred by it so long as it exists, *i.e.* if it be in the usual form, during the life of a jointress under it, or so long as the interests of portionists under it are contingent on their attaining 21, but in cases where there is valuable consideration for the resettlement B. cannot, without the consent of the persons claiming under it, all of whom are his assigns, exercise those powers, see S. L. Act, 1882, s. 50 (3). This difficulty may be obviated by inserting the following clause in the resettlement :

(C.) "AND IT IS HBY AGRD & DECLD that nothg contd

Proviso in reset-powers hby conferred by reference to or by way of extension or enlargemt of the powers of the sd Acts,] AND THAT a sole tree for the time being of these psnts shl be competent to act for all the pposes of the sd Acts, [or such powers as afsd,] includg the rect of capl moy [& notices] thrunder.

Provision as to title of S. L. Acts.

CV. PROVD ALWAYS, that any & every reference hrin contd to the S. L. Acts, 1882 to 1890, or any of such Acts, shl be deemed to extend to & include any Act or Acts from time to time in force, extendg, amendg, or re-enactg the same, but not so as to abridge or restrict any of the powers hby conferred by reference thto.

Covenant to surrender copyholds upon trusts corresponding with uses of freeholds (*a*).

CVI. AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, [& in conson of the sd intd marre,] the sd ——, **as settlor,** [with the approbon of the sd ——,] doth hby covt with the sd, *trees*, their hrs & assns, that [if the sd intd marre shl take place], he the sd —— & all other necy pties (if any) will forthwith surrender into the hands of the lord or lords, lady or ladies, of the sevl manors of wch the same are resply holden, accdg to the custom thof resply, *pcels, Vol. I.*, p. 386: [AND ALL other (if any) the hds of copyhd or customary tenure, situate in the respive parishes of, &c., in the coy of, &c., to wch the sd —— is now entled for an este of inhance at law or in equity], TO THE USE of the sd, *trees*, their hrs & assns, accdg to the customs of the sd respive manors, by & under the rents, fines, heriots, suits & services due & of rt accustomed for the same: UPON SUCH TRUSTS & subjt to such powers & provons as shl correspond with the uses, trusts, powers, & provons hinbfe decld & contd concerng the freehd hds hby settled, or as near thto as the different

tlement keeping alive the statutory powers of the tenant in tail under a prior settlement.

in these psnts shl prevent the sd B. from exercisg the powers conferred on him by the S. L. Acts, 1882 to 1890, as havg been tenant in tail in posson of the hds hby assured under the sd recited indre, dated, &c. [will of ——]."

Mortgages of settled copyholds.

(*a*) Where the copyholds form a substantial part of the settled land, it will be expedient to authorize moneys which may become raisable under the trusts of a term, to be raised by a mortgage of the inheritance, p. 642, form XCII. If this is done the clause in the text will enable the moneys to be raised by a mortgage of the copyholds in the usual form. In the absence of such a provision it may be difficult to raise the money out of the copyholds without the sanction of the Court, as the trustees cannot, in the absence of special custom, demise them for the term.

tenure of the ppty will permit, but not so as to increase or multiply chges or powers of chgg; AND FURTHER, that [after the sd intd marre, &] in the meantime & until the same respive copyhd hds & premes shl have been surrendered psuant to the covt hinbfe contd, the sd —— & his hrs will stand possed thof upon trust for the surrender thof psuant to such covt, & subjt thto upon the trusts & subjt to the powers & provons upon & subjt to wch the same wd be held if such surrender had been made.

Assignment of leaseholds for years or lives upon trusts corresponding with uses of freeholds.

CVII. AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt [& in conson of the sd intd marre], the sd ——, **as settlor,** [with the approbon of the sd ——], doth hby assn (*b*) unto the sd, *trees,* ALL & SINGR, *pcels by referce to leases bfe recited* (*c*) [AND ALL other (if any) hds held under any lease or leases for yrs [or a life or lives] situate in the respive parishes of, &c., in the coy of, &c., to wch the sd —— is now entled at law or in equity]: TO HOLD the same UNTO the sd, *trees,* for the sevl residues remaing unexpired of the respive terms, *or,* "for the sevl lives or life," or estes for wch the same are resply held & subjt to the rents, covts, & condons reserved by & contd in the sd respive leases, [UPON TRUST for the sd ——, until the sd intd marre, & after such marre], UPON TRUST that the sd, *trees,* or the [survors or] survor of them, shl, by & out of the rents & profits of the sd respive leasehd premes, pay the rents & pform & observe the covts by the sevl lessees, & condons by & in the sd sevl leases reserved & contd, & subjt thto shl hold the same premes upon such trusts & subjt to such powers & provons as shl correspond with the uses, trusts, powers, & provons hinbfe decld & contd concerng the freehd hds hby settled or as near thto as the nature of the premes will permit, but not so as to increase or multiply chges or powers of chgg, & so that the sd leasehd premes (*d*) [or any

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(*b*) If the leaseholds are held for lives, say, "grt." The limitation to the trustees will be correct in either case.

(*c*) Where there are several leases omit the recital of the leases, and say, "ALL & SINGR the messes, tenemts, & hds comprd in or expd to be demised by the sevl indres of lease specified in the schdle hto."

(*d*) If any of the leaseholds are held for lives, say, "such of the sd premes as are held under a lease or leases for yrs."

undivided share thof] shl not vest absolutely in any pson hby made tenant in tail [male or in tail] by pchase, unless he [or she] shl attn the age of twenty-one yrs, but on his [or her] death under that age shl devolve in the same mner as if the same had formed pt of the freehds of inhance hby settled: [PROVD ALWAYS, & it is hby agrd & decld that a sale in lots of any leasehds for the time being subjt to the trusts of these psnts may be effected by an assnmt of the whole of the ppty demised by the lease to one pchaser, & by the grt eir by the pson or psons makg the sale or by such pchaser to each of the other pchasers of an under lease of the lot pchased by him for the whole term less one day at such apportioned intt & subjt to such covts & condons as may be agrd upon.]

Power to sell leaseholds by way of under lease.

Trusts of mining plant.

CVIII. AND THIS INDRE ALSO WITNETH, that in psuance of the sd agrmt, [& in conson of the sd intd marre,] the sd —— **as settlor,** doth hby assn unto the sd, *trees,* ALL & SINGR the plant, machy, & chattels in or upon or employed in the workg of the mines, collieries, & minls hby settled, TO HOLD the same UNTO the sd, *trees,* [UPON TRUST for the sd —— until the solemnizon of the sd intd marre & aftwds], upon the trusts hinafter decld; AND IT IS HBY AGRD & decld, that the plant, machy, & chattels hinbfe assned, or wch may hrafter be added to or substituted for the same or any pt thof, as hinafter mentd, shl [after the sd marre] be held upon such trusts, & subjt to such powers & provons as shl correspond with the uses, trusts, powers & provons hinbfe decld & contd concerng the freehd hds hby settled, or as near thto as the nature of the premes will permit, but not so as to increase or multiply chges or powers of chgg, & so that the same premes shl not vest absolutely in any pson hby made tenant in tail [male or in tail] by pchase, unless he [or she] shl attn the age of twenty-one yrs, but on his or her death under that age, shl devolve in the same mner as if the same had formed pt of the freehds of inhance hby settled: AND IT IS HBY AGRD that the sd trees or tree shl allow the sd —— durg his life to take & keep posson of the sd plant, machy, & chattels hby assnd, & of any plant, machy, & chattels wch may be substituted for or added to the same or any pt thof as hinafter mentd, & to employ the same in the workg of the mines, collieries, & minls for the time being subjt to this settlemt, with power for the sd —— to alter, vary, remove, sell, & dispose of the sd plant, machy, & chattels, or any of them in a pper course of managemt, & to rece the produce of such sales, but so that the sd —— shl be bound to keep the plant, machy, & chattels for the time being employed in or about the sd mines, collieries, & minls, in good & complete repair & workg order, & so that the same shl be sufft for the effectual workg of the sd mines, collieries, & minls, & accdgly that all plant, machy, & chattels substituted or added by the sd —— for or to the sd plant, machy, & chattels hinbfe assned, or any pt thof, & employed for the pposes afsd, shl be considered as going along with the sd mines, collieries, & minls; AND IT IS HBY AGRD that it shl be lful for, but not incumbent on the sd trees or tree, if in their or his uncontrolled discron, they or he shl be of opinion that the sd —— is dealg impperly with the sd plant, machy, & chattels, to enter into posson of the same, & to allow the sd —— to use the same subjt to such restrons only & in such mner as the sd trees or tree shl think fit; AND IT IS HBY AGRD that it shl be lful for the sd —— to sell any of the sd plant, machy, or chattels, to the lessee or lessees in any ming lease wch may be grted of the hds hby settled or any pt thof, but so that the pchase-moy for the same shl be reced by the sd trees or tree, & be applied as if the same had arisen from a sale of the sd hds & premes.

Trusts of chattels as heirlooms by reference to limitations of real estate (*a*).

CIX. UPON TRUST to permit the sd —— & other articles & effects to devolve & be enjoyed as heirlooms with the freehd hds hby settled, but so that the same [or any undivided share thof] shl not vest absolutely in any pson hby made tenant in tail [male or in tail] by pchase, unless he [or she]

As to heirlooms.

(*a*) For instances of trusts of heirlooms to follow a title or real estate, see *Re Lord Exmouth*, 23 Ch. D. 158; *Re Cresswell*, 24 Ch. D. 102; *Re Johnston*, 26 Ch. D. 538. As to the power of selling settled heirlooms under an order of Court, see the S. L. A., 1882, s. 37, which applies to heirlooms settled with a title (*Re Rivett-Carnac*, 30 Ch. D. 136), and enables the proceeds to be applied in the same way as other capital moneys (*Re Marlborough*, 32 Ch. D. 1); and see *Re Brown*, 27 Ch. D. 179; *Re Houghton Estate*, 30 Ch. D. 102; *Re Earl of Radnor*, 45 Ch. D. 402; but hereditaments purchased with such proceeds are not subject to the charges affecting the settled hereditaments, *Re Marborough and Queen Anne's Bounty*, [1897] 1 Ch. 712.

As to the different considerations guiding the Court in sanctioning a sale of heirlooms and a sale of the mansion-house, see *Re Ailesbury*, [1892] 1 Ch. 506.

shl attn the age of twenty-one yrs (*a*), but on his [or her] death under that age shl devolve as if the same had formed pt of the sd freehd hds : AND IT IS HBY AGRD that an inventory (*b*) of the sd heirlooms shl forthwith be made, & shl from time to time be revised at the cost of the pson for the time being entled to the use & enjoymt thof, if of full age, & shl be signed by such pson, & also by the sd trees or tree, & the sd heirlooms shl at all times be kept insured agst fire to their full value, so far as the same may be of an insurable nature, & pperly preserved, at the expse of the pson for the time being entled to the use & enjoymt thof : PROVD ALWAYS that the sd trees or tree shl not be bound to see to the insurce, custody, or preservon of the sd heirlooms, or to interfere in any way in relon thto further than to require such inventory to be made & signed as afsd, & shl not be responsible for any omission, neglect, or default on the pt of the pson entled to the use or enjoymt thof or 'orwise in relon to the insurce or preservon thof, nevs the sd trees or tree shl be at liberty at any time, if they or he shl so think fit, to interfere for the proton of the sd heirlooms : [AND IT IS HBY AGRD that any sale of all or any of the sd heirlooms may be made & that the moys arisg from such sale may be invested in the pchase of other chattels under the powers of the S. L. Acts, 1882 to 1890, witht any order of Ct (*c*).]

The same in personalty settlement (*d*).

CX. IN TRUST for the sd, *husbd,* durg his life, & after his dece for the sd, *wife,* in case she shl survive him durg her life, & after the dece of the survor of them, the sd, *husbd,* &, *wife,* in trust for the eldest or only son of the sd intd marre, but in case such eldest son shl die under the age of twenty-one yrs & witht issue, then in trust for the second son (if any) of the sd intd marre, with a like gift

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(*a*) If the words "& shl become entled to the actual posson of the freehd hds hby settled" are inserted, the usual resettlement by a father and son cannot be made, *Re Angerstein*, [1895] 2 Ch. 883. See 3 Dav. 624.

(*b*) If a schedule of the heirlooms is inserted in the deed, the provision for an inventory may be omitted.

(*c*) See the Act of 1882, s. 37 (3).

(*d*) This form properly belongs to the heading "PERSONAL SETTLEMENTS," but is inserted here as naturally connected with the preceding form.

over to the third & every yor son (if any) of the sd intd marre on the death of his next elder brother under the age of twenty-one yrs & witht issue: And in case there shl be no son of the sd intd marre, or an only or every son shl die under the age of twenty-one yrs & witht issue, then in trust for the eldest or only daur of the sd intd marre, but in case such eldest daur shl die under the age of twenty-one yrs & witht issue, then in trust for the second daur (if any) of the sd intd marre, with a like gift over to the third & every yor daur (if any) of the sd intd marre on the death of her next elder sister under the age of twenty-one yrs & witht issue: And in case there shl be no child of the sd intd marre, or every such child shl die under the age of twenty-one yrs & witht issue, then in trust for the exs & ads of the sd, *husbd*, & upon trust to permit the sd —— & other articles & effects to be used & enjoyed as heirlooms by the pson for the time being benefly entled thto under the trusts hinbfe decld: *Provons as to inventory, insurce, & preservon of heirlooms, & proton of trees, as in last form.*

Power to withdraw part of property from settlement.

CXI. PROVD ALWAYS, & it is hby agrd that it shl be lful for the sd, *settlor*, at any time by deed wholly to withdraw from this settlemt for his own benefit or orwise, & witht substitutg any equivalent for the same, any portion or portions of the land hby settled not exceedg in the whole in quantity 25 acres, except —— House & the lands usually occupied thrwith, & by such deed to revoke all the limons, trusts, powers, & provons hrin decld & contd of or concerng the lands so withdrawn, & to appt the same free from this settlemt in any mner he shl think pper, but nevs witht prejudice to any leases or mtges wch may have been prevsly created under the powers of these psnts: And that as betn the premes so withdrawn from this settlemt & the premes wch shl remain subjt thto, the burden of any mtge created as afsd & wch may affect the premes jtly, shl be borne exclusively by the premes so remaing subjt.

Proviso that powers of former settlement shall over-reach

CXII. PROVD ALWAYS, & it is hby agrd that nothg hrin contd shl in anywise prejudice or affect the powers annexed to the life este of the sd ——, or the powers exerciseable by the respive trees or tree with the consent of the sd —— contd in the sd indre of, &c., *the former settlemt,* or the statutory uses of resettlement.

Variations where additional property is settled (*a*).

powers incident to the sd life este or wch wd have been incident thto but for these psnts, or any of such respive powers, [other than, *here specify any powers wch are not to be exercised,*] & that the uses, estes, & powers limd or created by these psnts or by any exercise of the powers hrin contd shl from time to time [as regards such of the hds hby settled as immedly bfe the exon of these psnts were subject to the subsistg uses or trusts of the said indre of, &c., *the former settlemt, or,* " were subjt to the jt power of apptmt reserved to the sd A. & B. by the sd indre of, &c., *disentailg assurce,*"] be overreached by the exercise of any of the sd powers contd in the sd indre of, &c., *the former settlemt,* or the sd statutory powers, in the same mner as if the uses, estes, & powers, limd or created by these psnts had been limd or created by the sd indre of, &c., *the former settlemt* [& so that nothg hrin contd shl make the consent of any pson necy to the exercise of such statutory powers whose consent wd not orwise have been necy], AND further, that the hds to be pchased with any moys arisg from any sale, exchange [parton or enfranchisemt, or the grt of any easemt or other rt] under the powers contd in the sd indre of, &c., *the former settlemt,* or the sd statutory powers, shl, regard being had to the nature & tenure thof, be settled & assured to the uses, upon the trusts, & subjt to the powers & provons wch shl be subsistg by virtue of the sd indre of, &c., *the former settlemt,* [the said indre of, &c., *the disentailg assurce,*] & these psnts, & that all annl rents wch shl be reserved upon any exchange, [parton, enfranchisemt, or grt of any easemt or other rt,] under the power [sevl powers] in that behalf contd in the sd indre of, &c., *the former settlemt,* or the sd statutory powers shl be so reserved & settled that the same shl be reced & enjoyed by the pson or psons who by virtue of the said indre

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As to overreaching clause in resettlement.

(*a*) This clause, which keeps alive the powers of leasing and sale, &c., as well as the jointuring and other powers of the original settlement and enables such powers to be exercised so as to overreach the uses, &c., of the resettlement in the same manner as if the uses of the latter had been contained in the original settlement (see 3 Dav. Prec. pp. 596, 1062, note; *Re Wright*, 28 Ch. D. 93), should be inserted in a resettlement by father and son, where the father's life estate is preserved or restored, and the express powers annexed to it are to be preserved. Having regard to the decision in *Re Mundy & Roper*, [1899] 1 Ch. 275 (see *ante*, Vol. I., p. 467, note), the clause is not necessary merely for the purpose of preserving the powers conferred by the S. L. A. and incident to the father's life estate under the original settlement.

of, &c., *the former settlemt* [the sd indre of, &c., *the disentailg assurce,*] & these psnts wd for the time being be entled to the posson or rect of the rents & profits of the hds comprd in the sd indre of, &c., *the former settlemt,* & hby settled.

Power to appoint new trustees in strict settlement of realty. Variations where there are several sets of trustees (*b*).

CXIII. PROVD ALWAYS, & it is hby agrd that if the sd trees hby constituted, or any of them, or any tree or trees appted under this psnt power, or by a ct havg jurisdon in that behalf, shl die or remain out of the United Kingdom for more than twelve calr months, or desire to be dischged, or refuse or become unfit or incapable to act in the sd trusts, then, & in every such case, it shl be lful for the survivg or continug trees or tree for the time being [of the class in wch such vacancy or disqualificon shl occur] (& for this ppose every refusg or retirg tree shl, if willg to act in the exon of this

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As to trustee clauses.

(*b*) The trustees' receipt clause above, p. 517, is adapted also to a strict settlement. The receipt clause, power to appoint new trustees, and indemnity and reimbursement clauses may and should be omitted in real as well as personal settlements in reliance on the enactments referred to above, p. 517, note (*d*); but the clause supplemental to the statutory provisions as to the indemnity of the trustees, p. 521, should be inserted if required. The full clauses in the text, though retained, can in future be very rarely required.

As to appointing several sets of trustees.

There were very commonly, in a settlement of a landed estate, four sets of trustees, namely: 1. Of the pin-money term; 2. Of the jointure term; 3. Of the portions term; and 4. The trustees of the powers, and for the other general purposes of the settlement. But the pin-money and jointure trustees were rarely if ever called upon to act, and as it is now wholly unnecessary to limit pin-money and jointure terms (see p. 582, note, p. 593, note (*c*)), those trustees may in future be dispensed with, and there is not in general any necessity for the portions trustees being distinct from the general trustees, especially as the duties of the latter will in most cases be greatly restricted by the effect of the S. L. Acts. One set of trustees will, therefore, now generally suffice.

Formerly, there was an objection to limiting two terms (*e.g.*, the jointure and portions terms), or a term and an estate of freehold, in immediate succession to the same trustees, but this objection is removed by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (4). Where one of the interests is held *en autre droit* there is no merger in equity; *Chambers* v. *Kingham*, 10 Ch. D. 743; and see *Re Radcliffe*, [1892] 1 Ch. 227. The section applies to all cases where there would not be a merger both at law and in equity; and if an intention against merger appears on the document, no merger will take place; *Snow* v. *Boycott*, [1892] 3 Ch. 110.

As to power of appointing new trustees.

The power of appointing new trustees in a strict settlement is usually vested in the surviving or continuing trustees, and not in the tenant for life (as in the case of personalty settlements); and this is undoubtedly now proper, having regard to the powers vested in the tenant for life under the S. L. Acts, and the desirability of the trustees being independent of him.

As to power to employ agents, &c.

The power for trustees to employ agents, etc., p. 521, is adapted to and should usually be inserted in real as well as personal settlements.

power, be considered a continug tree) or for the actg exs or exor, ads or admor, of the last survivg or continug tree [of the same class] to appt a new tree, or new trees, in the place of the tree or trees so dying or remaing out of the United Kingdom, or desirg to be dischged, or refusg or becomg unfit or incapable to act as afsd : And upon any such apptmt the no. of trees may be increased or reduced, but not to less than two : And upon any such apptmt all the trust este & ppty, if any (*a*) [*if there are sevl sets of trees, add*, "then vested in the trees or tree of the class in wch such vacancy or disqualificon shl have occurred, or in the hrs, exs, or ads of the last survor of such trees"] shl, if & so far as the nature of the ppty & other circes may require, be transferred so that the same may be vested in the trees for the time being [of the same class] : And every tree so appted as afsd may, as well bfe as after such transfer of the trust ppty, (if any,) act or assist in the exon of the trusts of these psnts as fully & effectually in all respts as if he had been hby appted a tree.

Addition to statutory provisions for indemnity or reimbursement of trustees (*b*).

CXIV. AND IT IS HBY FURTHER AGRD that in addon to the ordinary indemnity given by law to trees, the sd trees or tree may [pchase or] lend on the secy of any hds with less than a marketable title, witht being liable for any loss occasd thby, [AND ALSO that if any hds pchased under any statutory power [or the power hinbfe contd] shl be conveyed to the sd trees or tree, or if the sd trees or tree shl under any power hinbfe contd accept a lease of any hds they or he shl be entled to be indemnified to the fullest extent out of the hds hby settled, & the rents & income thof in respt of any liability incurred by them or him as the owners or owner for the time being of such hds to the paymt of any rents & the performce & observce of any covts or condons, or under any covts entered into by the sd trees or tree on the sd pchase or lease, or orwise in relon thto (*c*)].

(*a*) The words "if any" are proper in the case of a strict settlement where the trustees of the powers take no estate.

(*b*) See p. 657, note. This form will generally suffice.

(*c*) Where a purchase of leaseholds is made under a power the trustees are bound to enter into the usual covenant for the indemnity of the vendor ; *Beauclerk* v. *Ashburnham*, 8 Beav. 322 ; *Cadogan* v. *Essex*, 2 Drew. 227. As to their liability as owner of a rent-charge, see *Pertwee* v. *Townsend*, [1896] 2 Q. B. 129 ; *Re Herbage Rents*, [1896] 2 Ch. 811.

Provisions for indemnity and reimbursement of trustees.

CXV. PROVD ALWAYS, & it is hby agrd that the trees for the time being of these psnts shl be resply chargeable only with such moys, stks, funds, & secs, as they shl resply actually rece, notwg their resply signg any rect for the sake of conformity, & shl be ansble & acctable only for their own respive acts, rects, neglects & defaults, & not for those of each other, nor for any banker, broker, auctioneer, or other pson with whom or into whose hands any trust moys or secs may be deposited or come, nor for dispensg wholly or partially with the investigon or prodon of the lessor's title on lendg moy on the secy of or pchasg leasehds, nor for orwise acceptg less than a marketable title on the pchase, or takg in exchange, [or on parton or enfranchisemt,] or on lendg moy on the secy of any hds, nor for any defect in title or value of any hds pchased or taken in exchange, [or on parton or enfranchisemt] or on mtge, nor for the insuffcy or deficiency of any investmt, nor for any other loss, unless the same shl happen through their own wilful default resply, [nor for any act or thing done or omitted by the sd trees in the exon of the trusts of these psnts under the advice or in accdce with the opinion prevsly obtained of any counsel of not less than 10 yrs standg (*d*)]: *provons as to pchased hds, &c., as in precedg form.* AND ALSO that the sd sevl trees or tree for the time being may reimburse themselves & himself resply, or pay & dischge out of the trust premes all expses incurred in or about the exon of the trusts or powers of these psnts.

(*d*) The words here bracketed are of course exceptional.

PRECEDENTS (*a*).

I.

PREC. I.

STRICT SETTLEMENT *on marriage of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *belonging to* HUSBAND, *with usual clauses, the Limitations not extending beyond the* ISSUE *of the* MARRIAGE. VARIATIONS *where the* DAUGHTERS *take as* TENANTS *in* COMMON, *and for a* BUILDING *or* MINING ESTATE, *and where the* POWERS *of the* SETTLED LAND ACTS *are* EXTENDED, *and where there are* EXISTING FAMILY *charges under an* EARLIER SETTLEMENT *under which the* SETTLOR *has been* TENANT IN TAIL IN POSSESSION (*b*).

Recitals.

Agreement for settlement.

PARTIES, A., *husbd*, 1; B., *wife*, 2; C. & D., *general trees*, 3; [E. & F., *trees of portions term*, 4] (*c*). *Recite intd marre*, p. 450; *Title of husbd as in a convce on sale, or as above*, p. 573, *form* I.; AND WHAS upon the treaty for the sd intd marre, it was agrd that the sd hds & premes [& all other, if any, the hds of the sd A. of whatsr tenure, situate or arisg in the respive parishes hinafter mentd] shd be assured & settled in mner hinafter appearg; NOW THIS INDRE WITNETH that in psuance of the sd agreemt, & in conson of the sd intd marre, the sd A., **as settlor**, with the approbon of the sd B., doth hby grt unto the sd C. & D., *Freehd pcels by referce, if convenient to a schdle*, (*d*), [And all other (if any) the freehd

Witnesseth.

Grant.

(*a*) As to registration of settled land, see Vol. I., p. 477.

(*b*) The variations for the last mentioned case will be recitals of the earlier settlement showing that the husband became tenant in tail in possession subject to family charges, the disentailing assurances, the habendum will be "subjt to the subsistg uses, trusts, powers & provons of the *earlier settlemt.*" After the appointment of trustees under the S. L. Act, insert proviso keeping alive the powers of tenant in tail in earlier settlement, p. 649, note (*d*), form C.

(*c*) If there is only one set of trustees, the part in this bracket will of course be omitted. See as to this, p. 657, note.

Tithes.

(*d*) It not unfrequently happens that the settlor is the owner of the tithes on the whole or part of the lands; these, if not merged, must be expressly conveyed, messes, lands, tithe rent-chges, & hds of or belongg to him, the sd A., situate or arisg in the parishes of —— & ——, in the coy of ——] To Hold the same Unto the sd C. & D., & their hrs (*e*), To the use of the sd A. & his hrs until the solemnon of the sd intd marre, & aftwds, *limon of rent-chge to B. durg jt lives of A. & B. by way of pin-moy*, p. 584 (*f*) *& subjt thto to the use of A. for life*, p. 578; *Limon of jture rent-chge to B.*, p. 585 (*g*); *Limon to E. & F., or to C. & D.* (*h*) *of a term of* 1000 *yrs, to commce from the death of A.*, p. 577; *Limon to sons* "of the sd A. by the sd B.," *successively in tail male*, p. 586, [*Limon to sons* "of the sd A. by the sd B.," *successively in tail genl*, p. 586; *Limon to daurs*, "of the sd A. by the sd B.," *as tenants in common in tail genl with cross remrs*, p. 587]; *remr*, To the use of the sd A., his hrs & assns, *or*, "in fee simple"; *Trusts of term for raisg portions*, p. 593; *Power to trees of term to accept other secy*, &c., p. 609, *mutatis mutandis; Provon as to satisfon of portions by advcemts*, p. 597; *Power to husbd to jture a future wife*, p. 602, *& to chge portions for chln of future marre*, p. 604; *Power to trees to manage durg minorities*, p. 609; *or the addon to statutory power*, p. 614; [*with the varions where there are limons to tenants in common*, pp. 612, 616, *notes*] (*i*); [*Provon for the case of there being*

Habendum.

Limitations.

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as they would not pass by a conveyance of the land; *Chapman* v. *Gatcombe*, 2 Bing. N. C. 516; Williams R. P.

(*e*) As to limiting an estate in fee simple or in tail by those words in lieu of the word "hrs" or "hrs of the body" by virtue of the Conv. Act, 1881, s. 51, see p. 586, note.

(*f*) As to the mode of securing the wife's pin-money, having regard to the M. W. P. A., 1882, see p. 584, note.

(*g*) As to the remedies of the owner of a rent-charge, see *ante*, Vol. I., pp. 314, 560.

(*h*) In a settlement creating several terms for various purposes, they may be all limited to the same trustees (see p. 657, note); or in lieu of several terms one term for all the purposes, preceding all the other limitations, might be created, as in the next precedent.

(*i*) The express powers of leasing and sale, &c., are omitted in reliance on the S. L. Acts (as to which see the notes, *supra*), according to the undoubtedly proper course (see p. 572, note). If, in any exceptional case, it is desired to give express powers, the appropriate powers may be inserted in detail, according to the forms in p. 614 *et seq.*, or by a short clause incorporating the statutory powers; see p. 639, form LXXXII.

As to powers under S. L. Acts.

Although where the limitations are of the ordinary kind the Acts will apply and cannot be excluded (see p. 571, note), if it is desired to prevent the first

Frame of settlement to

PREC. I.

no pson havg the powers of the S. L. Acts, p. 640]; *Provon as to notices under the Acts*, p. 648; *Power to rele covts in a lease, &c.*, p. 625; [*Add any of the follg clauses wch may be appropriate & required; Provon as to extension of powers of Acts*, p. 640, *form* LXXXIV. (*a*); *Provon extendg leasg powers*, p. 641; *Power to make grts in fee for bldg pposes, & other special powers for bldg estc*, p. 642; *Provon as to fines on renewal of leases*, p. 641, *form* LXXXVIII.; *As to ming rents*, p. 642; *Power to raise moy on mtge*, p. 642, *form* XCII.; *Power to accept leases of easemts*, p. 644; *Provon*

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exclude statutory powers.

taker from having the powers of the Acts this may be effected by vesting the estate in trustees during his life upon trust for payment to him of an annuity, charged upon the rents and profits only, but of an amount sufficient to exhaust them; and to accumulate the surplus (if any), the accumulations being added to the capital of the estate. This is sufficient if the trust for accumulation is absolute, so that the tenant for life cannot stop it; see *Re Strangways*, 34 Ch. D. 423; Vol. I., p. 469, note. If the settlor himself is the first taker the trust for accumulation would be valid to the full extent; but otherwise it might go beyond the period allowed by law (see p. 601, note), in which case it would be void for such excess. Under a trust of this frame the annuitant would not have the powers of the Acts, even though the annuity exhausted the whole of the rents; and if the accumulation is valid for his whole life, there would be no person during that period answering the definition of a tenant for life within the Acts and the powers of the Acts would be suspended altogether during his life; but if the accumulation is liable to fail before his death, the person who would on such failure become entitled to the surplus rents would have the powers of a tenant for life within s. 58 (vi.) of the Act of 1882, and have the statutory powers during the continuance as well as after the expiration of the trust for accumulation; see *Re Clitheroe*, 31 Ch. D. 135. In a settlement in this form the trustees should be directed at the request of the annuitant to demise the mansion-house, land in hand, and shooting to him for years determinable on his death, at a rack-rent, or such other rent as may be fixed.

The same in resettlement.

A similar form of settlement might be used in a resettlement by father and son, an annuity in lieu of a life estate being given to the son in remainder after the father's death, and (the son being in that case a settlor) the trust for accumulation during his life would be valid.

Accumulation.

Care should be taken in either a settlement or resettlement on the lines above suggested that no trust to purchase land out of the accumulations is inserted, having regard to the Accumulations Act, 1892; see above, p. 599.

In these cases the insertion of express powers of leasing and sale, &c., either in detail or by reference to the S. L. Acts, would be necessary, until the statutory powers arise. See the form, *ante*, p. 501.

As to dower-house, &c.

The contrivance of directing a house to be let for a small nominal rent to a person for years determinable on life may be used where a widow is to have a dower-house, or an old servant a cottage for life rent free, so as to prevent the donee from being a tenant for life of the house or cottage with the statutory powers; see the Act of 1882, s. 58 (1), (iv.).

(*a*) Or, if more convenient, insert form LXXXIV., p. 640, after the clauses extending the Acts.

as to sale, &c., of mansion-house, &c., p. 642; *Power to sell for fee-farm rents,* p. 643; *Power to exchange for land in Ireland,* p. 643; *Power to sell or grt sites for churches, schools, &c.,* p. 643; *Extension of powers of investmt under Acts,* p. 644; *Extension of provons of Acts as to improvemts,* p. 645; *Power to tenant for life to chge inhance with improvemts,* p. 647; *Power to lease to tenant for life,* p. 647; *Provon requirg tenant for life to keep land in cultivon,* p. 647; *& power to lend moy to him for the ppose,* p. 647;] *Covt by A. to surrender copyhds,* p. 650; *And assnmt by A. of leasehds, on trusts correspondg with uses of freehds,* p. 651, *includg the power to sell by way of underlease,* p. 652; [*for a ming este, if required, Trusts of ming plant,* p. 652]; *Apptmt of trees under S. L. Acts,* p. 648; *Apptmt of trees of compound settlemt,* p. 649, *note* (*d*), *form A.*; *Provon as to title of S. L. Acts,* p. 650; *Clause supplemtal to statutory provons as to indemnity of trees,* p. 658 (*b*), *Power to trees to employ agents, &c.,* p. 521. IN WITS, &c. Copyholds. Leaseholds.

[*Schdles.*]

II.

STRICT SETTLEMENT *on marriage of* FREEHOLDS *belonging to* HUSBAND, *the* LIMITATIONS *extending to the* SONS *only of the marriage. A very* SHORT *Form without recitals.* PREC. II.

PARTIES, A., *husbd,* 1; B., *wife,* 2; C. & D., *trees,* 3: WITNETH that in conson of an intd marre betn the sd A. & B., the sd A., **as settlor**, with the approbon of the sd B., doth hby grt unto the sd C. & D., *Pcels as in Convce on Sale:* To HOLD the same UNTO the sd C. & D. & their hrs TO THE USE of the sd A. & his hrs until the solemnon of the sd intd marre, & aftwds, *limon to C. & D. of a term of* 1000 *yrs,* "to commce from the solemnon of the sd intd marre," p. 577, *with remr to the use of A. for life,* p. 578, *remr to sons* "of the sd A., by the sd B.," *successively in tail* [*male*], p. 586, *remr* TO THE USE of Parties Witnesseth. Limitations.

(*b*) As to the power to appoint new trustees, see p. 657, note.

PREC. II.

Trusts of term.

the sd A., his hrs & assns : AND IT IS HBY DECLD that the sd C. & D. & the survor of them, or other the trees or tree for the time being of these psnts (hinafter called the sd trees or tree) shl stand possed of the sd term of 1000 yrs upon trust, by & out of the rents & profits of the sd premes, or by the sale of timber or minls, or by mtge of the sd premes or any pt thof for all or any pt of the sd term, to raise, pay, & apply the annl & gross sums follg [free from death duties], that is to say, FIRST, an anny of £——, commencg from the dece of the sd A., payable to the sd B., if survivg, durg her life for her septe use on the usual qtr days in bar of dower, & so that she shl not have power durg the sd intd coverture to dispose of or chge the same by way of anticipon ; SECONDLY, the sum of £—— to be raised after the dece of the sd A., or in his lifetime with his consent in writg, & to be held in trust for all or any, to the exclusion of the others or other, of the chln or remoter issue of the sd intd marre, other than any son or sons who bfe his or their resply attaing the age of twenty-one yrs shl become entled whether in posson or remr to the first este in tail [male] under these psnts, if more than one in such shares & in such mner in all respts as the sd A. shl by deed, revocable or irrevocable, or by will or codl, appt, AND IN DEFAULT of & subjt to any such apptmt in trust for all or any the chln or child of the sd intd marre (other than as afsd) who being a son or sons attn the age of twenty-one yrs, or being a daur or daurs attn that age or marry, & if more than one in eql shares, AND SUBJT to the trusts hinbfe contd, the sd sum of £——, or so much thof as shl not become vested under the sd trusts, shl sink into the este & not be raised ; THIRDLY, after the death of the sd A., such annl sum for the maintce, educon, or benefit of each child or grandchild expectantly entled to a portion as the sd trees or tree shl think fit, such annl sum not to exceed intt at the rate of 4 p.c. p.a. on such portion, & to be so applied by the sd trees or tree, or to be pd by them or him to the gdians or gdian of such child or grandchild for the ppose afsd, witht seeing to the applicon thof ; FOURTHLY, such sum not exceedg a moiety of the then expectant presumptive or vested portion of any child or grandchild as the sd A. shl durg his life in writg direct, or as the sd trees or tree shl after his dece think fit, to be raised after the dece of the sd A., or in his lifetime if he shl in writg so direct, &

For raising jointure.

Portions.

Maintenance.

Advancement.

to be applied for the advcemt of such child or grandchild in such mner as the sd A., durg his life, or the sd trees or tree after his death, shl think fit, but so that, if any such advce shl be made, an eql amt of the sd sum of £——, shl sink into the este & shl not be raised; *Provon as to surplus rents of term*, p. 597, *clause in brackets at end of form* XXX.; *Provon as to satisfon of portions by advcemts*, p. 597; *Minority clause supplemtal to statute*, p. 614; *Provon for the case of there being no pson havg the powers of the S. L. Acts*, p. 640; *Provon as to notices under the Acts*, p. 648; *As to sale, &c., of the mansion-house, &c., under the Acts*, p. 642, *& Extension of powers of investmt under Acts*, p. 644; *insert any other of the clauses extendg the powers of the Acts*, p. 641, *et seq.*, *wch may be required*; *Provon as to extension of powers of Acts*, p. 640, *form* LXXXIV.; *Apptmt of trees under the Acts*, p. 648; *Apptmt of trees of compound settlemt*, p. 649, *note* (*d*), *form* A.; *Provon as to title of the Acts*, p. 650; *Clause supplemtal to statutory provons as to indemnity of trees* (*a*), *& power to trees to employ agents, &c.*, p. 521. IN WITS, &c.

III.

PREC. III.

RESETTLEMENT *of* FREEHOLDS, COPYHOLDS, LEASEHOLDS, *and* HEIRLOOMS, *by a* FATHER *and his* ELDEST SON, *on the latter Coming of Age, the* LIMITATIONS *being extended to* COLLATERALS. NAME AND ARMS CLAUSE. SHIFTING CLAUSE, CARRYING OVER THE ESTATE ON SUCCESSION TO ANOTHER ESTATE. *The* FATHER'S *old* LIFE ESTATE, *with the powers annexed to it being* PRESERVED. VARIATIONS *where an* ADDITIONAL JOINTURE *is secured to the* FATHER'S WIFE, *and* ADDITIONAL PORTIONS *to his* YOUNGER CHILDREN. RELEASE *by father of claims* (*b*).

Recitals.

PARTIES, A., *father*, 1; B., *son*, 2; C. & D., *trees* (*c*), 3; *Recite, mutatis mutandis, prior settlemt*, p. 574; *Interim dealgs*

(*a*) As to the power to appoint new trustees, see p. 657, note.

(*b*) Where the land is registered no change in the register need be made.

(*c*) As to the employment of only one set of trustees, see p. 657, note.

PREC. III.

with the ppty, p. 577; *State of the family*, p. 576; *Disentailg assurce of freehds*, p. 575, *& of copyhds, relimitg father's old life este* [*or*, *Short recital of effect of settlemt & disentailg assurce*, p. 576;] *Title to leasehds*, p. 576; *Incumbces*, p. 574; AND WHAS, under or by virtue of the sd indre of settlemt, &c., & in the events wch have happened, the articles & effects specified in the —— schdle hto now stand settled in trust for the sd A. for his life, with remr to the sd B. absolutely; AND WHAS the sd A. & B. have agrd to make such settlemt as is hinafter contd of the sd respive freehd, copyhd, & leasehd hds, descd in the sd —— schdles hto, & all other (if any) the hds, of whatever tenure, in the respive parishes of, &c., wch are now subjt to their jt power of apptmt, & also of the sd psonal chattels & effects. NOW THIS INDRE WITNETH, that in psuance of the sd agrmt, & in conson of the premes, they, the sd A. & B., **as settlors** (*a*), in exercise of the power vested in them by the sd indre of, &c., *the disentailg assurce*, & of every other power enablg them or eir of them in this behalf, do & each of them doth hby direct & appt that, *Freehd pcels by reference, if thought pper, to a schdle* [& all other (if any) the hds of freehd tenure in the respive parishes of ——, in the coy of ——, wch are subjt to the jt power of apptmt vested in the sd A. & B. as afsd], shl, but subjt to the chges & incumbces hinbfe mentd [*or*, specified in the —— schdle hto] so far as the same affect the same premes resply, & to the uses & estes limd or created by the sd indre of settlemt wch preceded the

Agreement for settlement.

Witnesseth.

Appointment of freeholds (*b*).

As to covenants for title.

(*a*) It is conceived that the appointment or conveyance by the father and son jointly "**as settlors**" would bind each to do or concur in any act necessary for confirming the settlement according to the statutory covenant. If the settlors convey "**as benefl owners**," the implied covenants would usually be limited as to A. to his life estate, and as to B. to the reversion in fee; as to the mode of effecting this, see Vol. I., p. 419, note.

As to form of conveyance.

(*b*) In this case the joint power of appointment is supposed to override the father's life estate, and to extend to the fee simple in possession; otherwise the conveyance would be by grant as well as appointment, which is sometimes done, even though the power of appointment extends to the fee simple in possession. In that case the appointment will be, "to the uses, &c., hinafter decld, &c."; followed by a grant by the father and son, "**as settlors,**" to E. & F. to the uses, &c., after declared, and a declaration that the appointment and grant shall operate and enure "to such uses," &c., as in the text; compare the form of conveyance by appointment and grant to a purchaser, Vol. I., p. 441.

limiton to the first & other sons of the sd A., successively in tail [male] (other than the este thby limd to the sd A. & his assns for his life) & to the powers annexed to or exerciseable durg the continuce of such precedent uses or estes resply (other than as afsd), & to the uses & estes relimd or created, or to be limd or created, in exercise of such powers, henceforth go & remain TO SUCH USES, upon such trusts, & subjt to such powers & provons, as the sd A. & B. shl from time to time by any deed or deeds, revocable or irrevocable, jtly appt, & in default of & subjt to any such appmt, TO THE USE that the sd B. & his assns shl durg the jt lives of the sd A. & B. rece, &c., *continue limon rent-chge*, p. 582, AND SUBJT & CHGED as hinbfe is mentd, TO THE USE of the sd A. & his assns durg his life, witht impeachmt of waste, in restoron & by way of confirmon of the life este limd to him the said A. by the sd indre of settlemt of, &c. (*d*). AND FROM & AFTER the dece of the sd A., [TO THE USE that if the sd K., *A.'s wife*, shl survive the sd A., the sd K., & her assns shl thenceforth durg her life rece the yrly rent-chge of £—— for her septe use to be in addon to the yrly rent-chge of £—— the paymt whof is secd to her & her assns by the sd indre of settlemt, of, &c., & to be chged upon & issuing out of the sd premes hby settled, *continue limon of jture rent-chge*, p. 585; *Limon to C. & D. of term of* 1000 *yrs*, p. 577;] *Remr to the use of B. for life witht impeachmt of waste*, p. 578 (*e*); *Remr to the use of his first & other sons successively in tail male*, p. 586; *Remr to the use of his first &*

Limitation to joint appointment of father and son.

In default of appointment.

Rent-charge to son (*c*).

To father for life.

Additional jointure to father's wife.

Limitations.

(*c*) Provision often has to be made for the event of the son predeceasing the father leaving male issue, so as to provide maintenance for the eldest grandson during the grandfather's life: see form above, p. 583. The son's younger children would be provided for (if at all) in the like event under the charge of portions.

(*d*) As to the restoration of the life estate see p. 579, note.

(*e*) Notwithstanding *Re Ashby*, [1892] 1 Q. B. 872, where on a settlement by father and son under a joint power of appointment of property not originally belonging to the son, the son's life estate in remainder after the father's death was held to be validly converted into a protected life estate by a provision for cesser on bankruptcy with the usual discretionary trust in that event, it is clear that in the case of an ordinary resettlement, such as that in the text, the son must be deemed the settlor *quoad* the reversion after the father's death, on the principle of *Att.-Gen.* v. *Braybrooke*, 5 H. & N. 588; 9 H. L. C. 150, and other cases decided on the Succession Duty Act, so that the son's life estate cannot be made determinable on bankruptcy; though a protected life estate might be given to him by a simple discretionary trust not preceded by a

As to giving son protected life estate.

PREC. III.

other sons successively in tail, p. 586; *Remr to his first & other daurs successively in tail male*, p. 586; *Remr to his first & other daurs successively in tail*, p. 586; *followed by similar limons to the other livg sons of A. & their issue, with remr* TO THE USE of every son of the sd A. hrafter to be born successively in remr one after anor accdg to their respive seniorities in tail; *Remr to the daurs of A. successively in tail male, with like remrs to them in tail*, p. 586; *Remrs to collaterals, with an ultimate remr* TO THE USE of the sd B., his hrs & assns; [*Name & arms clause*, p. 589]: AND it is hby agrd & decld that the sd premes are hby limd to the sd C. & D., for the sd term of 1000 yrs, upon trust that the sd C. & D., or the survor of them (hinafter called the said trees or tree) shl, after the death of the sd A., or in his lifetime with his consent in writg, raise by mtge of the sd premes or any of them, or by the sale of timber or minls, or by & out of the rents & profits of the sd premes, or by all or any of the means afsd, the sum of £—— [free from death duties], & shl hold the same in trust for all or such one or more exclusively of the others or other of the yor chln of the sd A., meang thby the sd, *here insert the names of A.'s yor chln, who have already attned twenty-one, or being daurs have married*, & any other child or chiln of the sd A. now already or hrafter to be born, who being a son or sons, &c., *continue definon of yor chln*, p. 594, *form* XXX., *with varion for the case of a name & arms clause*, at such age or time, &c., *continue trusts of portions term*, p. 594, *the powers throughout being given to A.: Provon as to surplus rents of term*, p. 597, *end of form* XXX., *& for satisfon of portions by advcemts*, p. 597, *Power to trees to manage durg minorities*, p. 609, *or the addon to the statutory form*, p. 614, PROVD ALWAYS, & it is hby agrd & decld, that it shl be lful for each [male] pson hby made tenant for life of the sd premes hby settled other than the sd A., *continue power to subseqt tenants for life to chge jtures*, p. 603, *saying*, "any jture rent-chge or rent-chges not exceedg the annl sum of £—— for any wife of the sd B., nor exceedg the annl sum of £—— for the wife of any other pson hby made tenant for life posterior in order of limon to the sd B., to be chged, &c."

Trusts to raise additional portions for father's younger children.

Power to jointure.

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determinable life estate, as in *Holmes* v. *Penney*, 3 K. & J. 90; see above, p. 469, note.

[*Power to female tenants for life to limit rent-chges to husbds,* p. 603]; *Power to subseqt tenants for life, includg B., to chge portions,* p. 606, *mutatis mutandis,* [*with the varion for the case of a name & arms clause, or a shiftg clause,* p. 594, *note*], *& saying,* "of any sum not exceedg in the different events hinafter specified the different sums hinafter mentd, that is to say, for the yor child or chln of the sd B., if he shl have but one yor child the sum of £——, & if but two yor chln the sum of £——, & if three or more yor chln the sum of £——, & for the yor child or chln of any other pson hby made tenant for life posterior in order of limon to the sd B., if he [or she] shl have, &c., *as above*"; *Provo that a chge of rent-chge, or portions, shl not take effect unless the pson chgg the same, or his issue, becomes entled in posson,* p. 606, *addg after,* "contd," "by any pson hby made tenant for life posterior in order of limon to the sd B., *& insertg the varion in note* (c), p. 607;" *Provo limitg total amt chgeable for rent-chges & portions,* p. 607, *mutatis mutandis* (*a*); *Power to trees of terms to accept other secy, &c.,* p. 609; [*Shifting clause carrying over este on succession to anor este,* p. 591; *Provon for the case of there being no pson havg the powers of the S. L. Acts,* p. 640]; *Provon as to notices under Acts,* p. 648; *Power to rele covts in a lease, &c.,* p. 625. [*Add any of the clauses extendg the powers of the Acts, &c.,* pp. 641 *to* 647, *wch may be appropriate.*]

Power to charge portions.

AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & in conson of the premes, they, the sd A. & B., **as settlors**, in exercise of the power vested in them by the sd indre of, &c., *the disentailg assurce,* & of every other power enablg them or eir of them in this behalf do, & each of them doth, hby direct & appt that, *Copyhd pcels, by referce, if thought pper, to a schdle,* [& all other, if any, the hds of copyhd or customary tenure in the respive parishes of, &c., in the coy of ——, wch are subjt to the power of jt apptmt vested in the sd A. & B. as afsd], shl henceforth, BUT SUBJT, &c., *as in the case of freehds, mutatis mutandis,* remain & be UPON SUCH TRUSTS, & subjt to such powers & provons as shl correspond with the uses, trusts, powers, & provons hinbfe limd, decld, & contd concerng the freehd hds hby settled, or as near thto as

Further wit-nesseth.

Appointment of copy-holds.

(*a*) As to the frame of settlements intended to exclude the statutory powers, see also p. 661, note.

the different tenure of the ppty will permit, but not so as to increase or multiply chges or powers of chgg: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & in conson of the premes, the sd A. & B., **as settlors,** do, & each of them doth hby, accdg to their respive estes & intts, assn unto the sd C. & D., *Leasehd pcels;* TO HOLD the same unto the sd C. & D., for the sevl residues remaing unexpired of the respive terms, *or,* "for the sevl lives or life," or estes for wch the same are resply held, & subjt to the rents, covts, & condons reserved by & contd in the sd respive leases, SUBJT, &c., *as in the case of freehds, mutatis mutandis,* UPON TRUST that the sd C. & D., or the survor of them, &c., *continue as at* p. 651, *form* CVII., *includg the power to sell by way of underlease.* And in psuance of an agrmt in this behalf the sd A., as well in his capacity of exor of his father X., deced, as in his own rt, doth hby rele & dischge all & singr the hds & premes hby settled from all claims, demands, actions, suits, & accts whatsr at law or in equity for or in respt of any moys at any time pd or applied by the said X., or by him the sd A., in or towards the dischge or satisfon of any of the chges or incumbces for the time being affectg all or any pt or pts of the same hds & premes, or any moys pd or contributed by the sd X., or by him the sd A., for or towards the pchase of any of the sd hds & premes: AND THIS INDRE ALSO WITNETH that in further psuance, &c., & in conson, &c., the sd A. & B., **as settlors,** do, & each of them doth hby, accdg to their respive estes & intts, assn unto the sd C. & D. ALL & SINGR the sd —— & other articles & effects descd in the —— schdle hto, TO HOLD the same unto the sd C. & D., upon trust, &c., *continue trusts of chattels as heirlooms,* p. 653. *Provo that powers of former settlemt shl overreach uses of resettlemt,* p. 655; *Apptmt of trees under the S. L. Acts,* p. 648; *Apptmt of trees of compound settlemt,* p. 649, *note (d), form A., &c.,* [*& B.*]; *Provon as to title of Acts,* p. 650; *Clause supplemtal to statutory provons as to indemnity of trees,* p. 658 (*a*); *Power to trees to employ agents, &c.,* p. 521. IN WITS, &c.

Further witnesseth.

Assignment of leaseholds.

Release by A. of claims.

Further witnesseth.

Assignment of heirlooms.

[*Schdles.*]

(*a*) As to the power to appoint new trustees, see p. 657.

IV.

SETTLEMENT *on Marriage by a* TENANT *for* LIFE *in* POSSESSION *of* SETTLED ESTATES, CHARGING PIN-MONEY *and a* JOINTURE *for his wife, and* PORTIONS *for younger children* (*b*).

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PARTIES, A., *husbd,* 1; B., *wife,* 2; C. & D., *trees of jture & portions term,* 3. *Recite intd marre,* p. 450; *Settlemt or Will under wch A. is tenant for life of estes, & givg powers of jturg & chgg portions, wch shd be recited fully; & if A. is first tenant for life recite the limon to him for life; orwise recite that the estes were thby limd,* " to certain uses under wch the sd A. is now tenant for life in posson of the sd estes": AND WHAS upon the treaty for the sd intd marre, it was agrd that the sd A. shd make such provon for the sd B. & his yor chln by her as is hinafter contd: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the sd intd marre, the sd A., **as settlor,** doth hby grant unto the sd C. & D.: ALL & SINGR the manors, messes, lands, tenemts, & hds of freehd tenure, wch are now subjt to the subsistg uses of the hinbfe recited indre of settlemt, *or,* " will," [*or if pt only of the estes is to be chgd, set out the pcels*]: TO HOLD the same UNTO the sd C. & D. & their hrs durg the jt lives of the sd A. & B., TO THE USE that in case the sd intd marre shl take place the sd B. shl durg the jt lives of the sd A. & B. rece, &c., *continue limon of rent-chge by way of pin-moy to B.,* p. 584, *form* XI., *saying,* " hds & premes hby grted:" AND subjt & chged as afsd TO THE USE of the sd A. & his assns [witht impeachmt of waste]: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & in conson of the sd intd marre, & in exercise of the power vested in him for this ppose by the sd indre of settlemt, *or,* " will," & of every or any other power in this behalf enablg, the sd A. **as settlor,** doth hby limit and appt TO THE USE of the sd B., and her assns, as her separate ppty, witht

Recitals.

Agreement.

Witnesseth.

Grant.

Parcels.

Habendum.

To use for securing pin-money for a wife (*c*).

Further witnesseth.

Charge of jointure.

(*b*) This Precedent is adapted to the forms in this collection; it will of course be understood that the details must be adapted to the forms used in the particular settlement.

(*c*) See p. 584, note (*a*). As to the statutory remedies, see p. 582, note (*b*).

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power of anticipon durg her life, in case the sd intd marre shl take effect & she shl survive him the sd A., a yrly rent-chge of £—— by way of jture, to be chged upon & issug out of all & singr the sd hds & premes hinbfe chged with the sd yrly rent-chge of £——, to be considered as accruing from day to day, but to be payable by eql qtrly paymts on, &c., *specify days or,* "on the usual qtr days," [witht any dedon except for succon duty, *or, if the power was given by the will of a testor who died bfe the* 1*st July,* 1888 (*a*), "legacy duty"], [witht any dedon for death duties] the first of such paymts to be made on such of the sd qtr days as shl happen after the death of the sd A., if the sd B. shl then be livg : [AND the sd A. doth hby appt & declare that the sd B. & her assns shl have & may exercise & enforce all such powers & remedies for recoverg & obtaing paymt of the said rent-chge & all arrears thof, & all costs and expses incurred in that behalf or in relon thto as are conferred by the 44th Section of the Convcg & Law of Ppty Act, 1881, in cases to wch that enactmt applies (*b*)]: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & in conson of the sd intd marre, & in exercise, &c., *as above*, the sd A., **as settlor**, doth hby chge all the sd premes hinbfe chged with the sd yrly rent-chges of £—— & £——, subjt to such respive rent-chges, & all powers & remedies & terms of yrs for obtaing paymt of the same resply, with the paymt to the yor child or chln of him, the sd A., by the sd B., meang thby any child or chln who being a son or sons shl attn the age of twenty-one yrs, or being a

Declaration as to remedies for recovering jointure.

Further witnesseth.

Charge of portions.

(*a*) See 51 Vict. c. 8, s. 21 (2). The question whether the jointure and portions can be given free from death duties depends upon the form of the power.

As to remedies for securing jointure.

(*b*) As to the remedies, see *ante*, Vol. I., pp. 314, 560, note. The remedies which the settlor can give must depend on the terms of the jointuring power; and if the settlement or will giving the power was before 1882, the remedies should be expressly given, either in full, as at p. 585, or by a short clause incorporating the statutory remedies as in the text, as there may be a doubt as to the application of the Act in that case. If the jointuring power does not enable the appointor to authorize the jointress to limit a term for securing it (according to the statute), but enables the appointor to do so, a clause limiting a term to C. and D., as below, and declaring the trusts of it for this purpose (see p. 593) should be added here; or, if so authorized, one term for securing the jointure and portions may be limited.

daur or daurs attn that age or marry, other than any son or sons who, bfe his or their resply attng the age of twenty-one yrs, shl become (*c*) entled [or any daur or daurs who bfe her or their resply attng that age or marryg shl become indefeasibly entled], whether in posson or remr, to the hds & premes comprd in or settled by the sd indre of settlemt, *or*, "will," for the first este in tail [male or in tail] [or the issue of any such yor child or chln, such issue to be born & take vested intts within twenty-one yrs from the death of the sd A.] of the sum of £—— [of, in the different events hinafter specified, the different sums hinafter mentd, that is to say, if there shl be but one such yor child the sum of £——, if there shl be only two such yor chln the sum of £——, & if there shl be three or more such yor chln the sum of £——], [free from death duties], such sum to be an intt vested in such yor child or chln, or such one or more exclusively of the others or other of such yor chln [or the issue of such child or chln], at such age or time, or respive ages or times, if more than one in such shares, & with such future or other trusts for the benefit of any such yor child or chln [or issue], upon such condons, with such restrons, & in such mner, as the sd A. shl by any deed or deeds, revocable or irrevocable, or by will or codl, appt, AND IN DEFAULT of & subjt to any apptmt under the power lastly hinbfe contd, with the paymt of the sd sum of £—— [£—— or £——, as the case may be], to such yor child or chln, and if more than one in eql shares as tenants in common, but not to be raisable or payable durg the life of the sd A., witht his consent in writg, PROVD ALWAYS & the sd A. doth hby further appt, that, &c., *Hotchpot clause*, p. 595: AND THE SD A. doth hby further appt that it shl be lful for the sd C. & D., or the survor, &c., at any time after the death of the sd A., or in his lifetime with his consent in writg, to raise any pt or pts, &c., *continue advcemt clause*, p. 595: AND ALSO doth hby

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(*c*) Where the eldest son of the marriage is not necessarily the first tenant in tail [male], say, "indefeasibly." Where there is a name and arms or other shifting clause in the settlement giving the power, the variations on p. 594, note, should be used, substituting "the sd indre of settlemt" or "will" for "these psnts," and making other corresponding alterations.

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chge all the sd premes hinbfe chged with the sd portion moys as afsd, but subjt & witht prejudice as afsd, with such annl sum of moy as shl be eql to intt at the rate of 4 p.c. p.a. on the expectant portion or portions of the sd child or chln [or more remote issue], such annl sum to be clear of all dedons except succon, *or,* " legacy," duty, to commce after the death of the sd A., & to be applied at the discron of the sd C. & D., or the survor, &c., for the maintce & educon, or benefit, &c., *continue maintce clause*, p. 595; AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, & in conson of the sd intd marre, & in exercise, &c., *as above*, the sd A. **as settlor**, doth hby appt all & singr the said hds & premes hinbfe chged with the sd [jture rent-chge &] portion moys as afsd, TO THE USE of the sd C. & D. for the term of 1000 yrs to commce from the death of the sd A., witht impeachmt of waste [UPON TRUST, &c., *trusts of term to secure jture rent-chge*, p. 593, *omittg the clause bracketed at the end* & also, but] subjt to the sd jture rent-chge, & to the powers, remedies [term of yrs], and trusts subsistg under these psnts or by law for securg the paymt thof, UPON TRUST, that the sd C. & D., or the survor of them, shl by mtge of the same premes, or any of them, for all or any pt of the same term, or by the sale of timber or minls, or by & out of the rents & profits of the same premes, or by all or any of the means afsd, raise the sd sum of £—— [£—— or £——, as the case may be], or so much thof as shl become raisable, with such intt thron, & such annl sums for maintce, & such sums for advcemt as may become raisable as afsd, & any costs & expses to be incurred in or about the raisg of the same & the exon of the trusts of such term, & subjt to & after paymt of such costs & expses, shl pay & apply the moys so raised to or betn, or for the maintce, educon, or advcemt of the sd child or chln [or issue] of the sd A. by the sd B., or any of them, or orwise, in such mner as the same resply ought to be pd & applied by virtue of the chges & provons in that behalf hinbfe contd, & so as to satisfy the same; *Provo as to paymt of surplus rents to reversioners*, p. 602, *mutatis mutandis.* [PROVD ALWAYS that the chge of pin-moy hinbfe contd in favour of the sd B., shl not affect the powers of sale & leasg & other powers

Further witnesseth.

Limitation of term.

Trusts of term.

Powers of S. L. Acts to be exercisable

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vested in the sd A. in relon to the sd hds & premes under the S. L. Acts 1882 to 1890 or orwise, wch shl be exercisable witht the consent of the sd B. or her assns (*b*). *Short clause as to apptmt of new trees*, p. 519.] IN WITS, &c.

without consent of wife (*a*).

V.

SETTLEMENT *on Marriage by* HUSBAND'S FATHER *of* FREEHOLDS *on* HUSBAND *and* WIFE *for Life, with remainder to their* ISSUE, *as they may* APPOINT, *in* DEFAULT EQUALLY, WITHOUT *trust for* SALE (*c*).

PREC. V.

PARTIES, A., *husbd's father*, 1; B., *husbd*, 2; C., *wife*, 3; D., E., & F., *trees*, 4. *Recite intd marre*, p. 450; *Title of A. to freehds*, p. 573: AND WHAS, upon the treaty for the sd intd marre, it was agrd that the sd A. shd convey & assure the sd hds & premes to the uses & in mner hinafter decld & expd concerng the same: NOW THIS INDRE WITNETH, that in psuance of the sd agrmt, & in conson of the sd intd marre the sd A., as **settlor**, doth hby grt unto the sd D., E., & F., *Pcels as in a Convce on Sale, Vol. I.*, pp. 385 *et seq.*: TO HOLD the same premes UNTO the sd D., E., & F., & their hrs TO THE

Recitals.

Agreement for settlement.

Witnesseth.

Conveyance.

Habendum.

As to family charges on life estate.

(*a*) According to *Re Du Cane and Nettlefold*, [1898] 2 Ch. 96, the clause in the text may be omitted; but it seems better to retain it.

(*b*) Usually pin-money is charged, and jointures and portions created under a power are charged on the freeholds only. But cases may occur where it is proper to charge them on the copyholds and leaseholds also, in which case the words following may be used:—

"AND THIS INDRE ALSO WITNETH that he the sd A. doth hby chge all & singr the hds of copyhd or leasehd tenure wch are now subjt to the subsistg uses of the hinbfe recited indre of settlemt, *or*, "will," with the paymt of the sevl rent-chges & portions hinbfe chged on the sd freehd hds to the sevl psons to whom the same are hinbfe resply made payable, & by way of addonal secy for the same resply."

(*c*) As to settlements in the above form, see 3 Dav. Prec., 1234, note; 4 *id.* 557, note. For similar settlements effected by a trust for sale, see above, SETTLEMENTS, PERSONAL, Precedents VII., VIII., IX., and X.; and as to the effect of the S. L. A., 1884, where the trust for sale is adopted, p. 494, note.

Limitations.

USES, upon the trusts, & subjt to the powers & provons hinafter decld & expd of & concerng the same, that is to say, TO THE USE of the sd A. & his hrs until the solemnon of the sd intd marre, & aftrwds TO THE USE of the sd B. & his assns durg his life, witht impeachmt of waste, & after the death of the sd B., TO THE USE of the sd C. & her assns durg her life witht impeachmt of waste, for her septe use, but so that durg coverture she shl not have power to dispose of or chge the rents & profits of the sd premes by way of anticipon, & after the dece of the survor of them, the sd B. & C., *limon to issue as parents or survor shl appt*, p. 587, *remr to chln as tenants in common in fee, with accruer on death under twenty-one, &c.*, p. 588 (*a*), *in default* TO THE USE of the sd A., his hrs & assns; *Hotchpot clause*, p. 477, *saying*, "the sd hds & premes;" *Advcemt clause*, p. 480, *saying*, "to raise by mtge, with or witht power of sale & of all or any pt or pts of the sd hds & premes, any pt or pts, &c.;" *Addon to hotchpot & advcemt clauses*, p. 481, *saying*, "the sd hds & premes or any pt or pts thof;" AND FURTHER, that no pson advcg moy on any such mtge shl be bound to enquire as to the propriety of raisg such moy or the amt raisable or to see to the applicon thof: *Power to manage durg minorities*, p. 609, *or the clause supplemtal to the statutory provons*, p. 614, *mutatis mutandis*; (*b*) *Provon as to notices under S. L. Acts*, p. 648; *Provon for the case of there being no pson havg the powers of the Acts*, p. 640; *Power to rele covts in a lease, &c.*, p. 625; [*Add any of the clauses extendg the powers of the S. L. Acts, &c., wch may be appropriate*, pp. 641 *et seq.*; *see the refernce to these clauses in Prec. I.*, p. 662]; *Apptmt of trees under S. L. Acts*, p. 648; *Provon as to title of the Acts*, p. 650; *Short clause as to indemnity of trees*, p. 648; *Power to trees to employ agents, &c.*, p. 521. IN WITS, &c.

Hotchpot clause.

Advancement clause.

(*a*) If preferred, insert a limitation to all the children as tenants in common in tail general with cross remainders, p. 587, *mutatis mutandis*.

(*b*) For express powers of leasing and sale, &c., if it is desired to insert them, see pp. 614 *et seq.*; as to their omission, see p. 572.

VI.

SETTLEMENT *of* FREEHOLDS *in* COMPLIANCE *with a* CONDITION *in a* WILL. *A short form* (*c*).

PREC. VI.

Recitals.

PARTIES, A., *settlor*, 1; B. *&* C., *trees of will*, 2. *Recite seisin in fee of A. of este to be settled; Will of the testor imposg the condon; Death & Probate:* AND WHAS the sd A. is desirous, for the ppose of complying with the sd condon in the sd recited will, of makg such settlemt as is hby effected of the hds hinafter mentd: NOW THIS INDRE WITNETH that in psuance of the sd desire, & in conson of the premes, the sd A., **as settlor** (*d*), doth hby grt unto the sd B. & C., *Pcels*, TO HOLD the same premes UNTO the sd B. & C., & their hrs, TO THE USES, upon the trusts, & subjt to the powers & provons to, upon & subjt to wch the same hds & premes ought to be limd or settled, for the ppose of pformg & complyg with the condons contd in the sd recited will as afsd [& subjt thto to the use of the sd A., his hrs & assns]. IN WITS, &c.

Witnesseth.

VII.

VOLUNTARY (*e*) SETTLEMENT *of* FREEHOLDS *by a* FATHER *on his* SON, *and the* SON'S MALE ISSUE, *the* LIMITATIONS *being extended as far as the* RULE *against* PERPETUITIES *will allow; the* FATHER *retaining an* ANNUITY *for his* LIFE SECURED *by a Term, and a* POWER *to* CHARGE *a gross* SUM. TRUSTS *for* ACCUMULATION. VARIATIONS *where the settlement is* REVOCABLE.

PREC. VII.

Recitals.

PARTIES, A., *father*, 1; B., "the only son of the sd A.," 2; C. *&* D., *trees* (*f*), 3. *Recite title of A. to freehds*, p. 573, *subjt*

(*c*) This Precedent is for a case where strict compliance is essential to avoid

(*d*) It might be more proper in this case that the settlor should convey "**as benefl owner,**" to imply the full covenants for title.

(*e*) As to the law affecting voluntary settlements, see p. 561, note.

(*f*) As to the use of one term for several purposes, see p. 657, note.

PREC. VII. *to leases*, p. 574, *& mtges*, p. 574: AND WHAS the sd B. has three sons only, namely K., L., & M.: AND WHAS the sd A. is desirous of makg such settlemt of the sd hds & premes as is hinafter contd [& it is his intention that such settlemt shl be irrevocable]: NOW THIS INDRE WITNETH that in conson of the natural love & affection of the sd A. for his son the sd B., & for divers other good causes & consons, he, the sd A., **as settlor**, doth hby grt unto the sd C. & D., *Pcels as in a Convce on Sale:* TO HOLD the same premes UNTO the sd C. & D., & their hrs, SUBJT to the chges & incumbces hinbfe mentd, [*or*, specified in the schdle hto], so far as the same affect the same premes resply, & to the leases & tenancies afsd, TO THE USES, upon the trusts, & subjt to the powers & provons hinafter decld & expd concerng the same (that is to say), *Limon to C. & D. for a term of* 1000 *yrs*, "to commce from the date of these psnts," p. 577; *remr to B. for life*, p. 578, *remr* TO THE USE of the sd K., L., & M., in succession, one after the other, accdg to seniority, durg their respive lives, with a limon by way of remr, immedly after the dece of each of them the sd K., L., & M., TO THE USE of his first & every other son, &c., *in tail male*, p. 586; AND AFTER the dece of all of them the sd K., L., & M., & in default of such issue of all of them, TO THE USE of every son of the sd B. hrafter to be born, *in tail male*, p. 586, *remr*, TO THE USE of the sd A., his hrs and assns: AND IT IS HBY AGRD & DECLD that the sd premes are hby limd to the use of the sd C. & D., for the sd term of 1000 yrs upon trust, *to raise anny of £——*, "commencg from the date of these psnts," *payable to A.*, p. 584, *mutatis mutandis*: AND UPON FURTHER TRUST, &c., *trust for accumulon*, p. 601 (*a*): AND UPON FURTHER TRUST, that if there shl be any yor child or chln of the sd B., meang &c., *continue trusts of*

Family.

Desire to make settlement.

Witnesseth.

Habendum.

Limitations.

Trusts of term to secure annuity.

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incurring a forfeiture; that a conveyance in a general form is a sufficient compliance with a condition, see *Scarlett* v. *Lord Abinger*, 34 Beav. 338. In a case of this nature it appears unsafe to appoint by the settlement trustees for the purposes of the S. L. Acts, unless such appointment is expressly authorised by the will.

As to trusts of policies for discharging incumbrances.

(*a*) If provision for discharging incumbrances is made by policies on the lives of A. and B., a recital of the title to, and if necessary an assignment of, the policies will be inserted, and trusts declared of the policy moneys, and trusts of term for securing payment of premiums, p. 598, will be substituted for the trust for accumulation.

portions term, p. 593 (*b*) : *Power to trees of term to accept other secy, &c.*, p. 609 ; *Power to male tenants for life to jture*, p. 603, *omitg the words* " other than the sd ——— ;" *Power to tenants for life to chge portions*, p. 606, *with similar omissions ; Provo as to events in wch rent-chges or portions are to take effect*, p. 606 ; *Provo limitg total amt chgeable*, p. 607 ; *Power to A., to chge a gross sum*, " to be raised forthwith, or at any time, in priority to all other ppal or annl sums chged or chgeable under these psnts," p. 608 ; *Power to limit a term for securg sum chged*, p. 608 ; *Power to manage durg minorities*, p. 609 ; *or clause supplemtal to the statute*, p. 614 ; (*c*) *Provon as to notices under S. L. Acts*, p. 648 ; *Provon for the case of there being no pson havg the powers of the Acts*, p. 640 ; *Power to rele covts in a lease, &c.*, p. 625 ; [*Add any of the clauses extending powers of S. L. Acts, &c., wch may be appropriate*, pp. 640 *et seq., see the referce to these clauses in Prec. I.*, p. 662] ; *Apptmt of trees under S. L. Acts*, p. 648 ; *Apptmt of trees of compound settlemt*, p. 649, *note* (*d*), *form* A. ; *Provon as to title of Acts*, p. 650 ; *Short clause as to indemnity of trees*, p. 658 ; *Power to trees to employ agents, &c.*, p. 521 ; [*Power of revocon*, p. 522]. IN WITS, &c.

VIII.

PREC. VIII.

DEED *in exercise of a general* POWER *of* REVOCATION *and new* APPOINTMENT *reserved to a* FATHER *and* SON *in a family* SETTLEMENT *of real and personal estate, effecting various* MODIFICATIONS *in the* SETTLEMENT (*d*).

Parties. Recitals.

PARTIES, A. & B., *apptors*, 1 ; M. & N., *trees*, 2. *Recite family settlemt of real & psonal este, with reservon of jt power*

(*b*) In a settlement of this nature it may be advisable to omit the trust for raising portions, and to give a power to B. to charge portions. This can be done by omitting the words, " other than the sd ———," in the power to charge portions.

(*c*) For forms of express powers of leasing and sale, &c., if it is desired to insert them, see pp. 614 *et seq.* ; as to the omission of these powers, see p. 572.

(*d*) This is an example of a mode of effecting alterations in a settlement by

PREC. VIII.

of revocon & new apptmt to A. & B.: AND WHAS the sd A. & B. are desirous of modifying the uses, estes, trusts, powers, & provons by & in the sd indre of settlemt limited, decld, & contd of & concerng the respive premes comprd in or dealt with by the same indre in mner and to the extent hinafter appearg: AND WHAS, for effectuatg the objects afsd, the sd A. & B. have determined to exercise the power of revocon & new apptmt in the sd indre contd as afsd to the extent & in mner hinafter appearg: NOW THIS INDRE WITNETH that, for effectuatg such objects as afsd, & as to each of them, the sd A. & B., in conson of the exon of these psnts by the other of them, & for the other consons hrin appearg, they, the sd A. & B., do & each of them doth, in exercise & psuance of the power for this ppose given or reserved to them by the sd indre of settlemt as afsd & of every or any other power in anywise enablg them or eir of them in this behalf, hby revoke, determine & make void the uses, estes, trusts, powers, & provons, by & in the sd indre of settlemt limd, decld, & contd of & concerng All & singr the sd estes, hds, moys, stks, funds, secs, & premes in the sd indre comprd, or wch are now by any means subjt to the subsistg uses or trusts of the same indre, or any of such uses or trusts, but so far only & to such extent & in such mner & form only as is or shl be necy to give effect to the modificons hby effected in such uses, estes, trusts, powers, & provons as afsd, or any of them, as hinafter appears, & to let in & give effect to such new, addonal, or other uses, *&c.*, as are hinafter limd, decld, or contd, of or concerng the sd respive premes or any of them, or any pt thof resply, & not further or orwise, and so that subjt to such modificons & to the introdon of such new or addonal uses, *&c.*, as afsd, the sd indre of settlemt & the uses, *&c.*, by & in the same limd, *&c.*, of & concerng the sd respive premes shl remain in force & unaffected by these psnts, & that from & after the exon of these psnts, the sd indre of settlemt shl, as far as may be, operate & take effect in the same mner as if the modificons hby effected, and the new, addonal, or other uses, *&c.*,

Desire to modify,

and exercise power.

Revocation.

But only to extent of modifications.

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exercising the power of revocation so far only as is necessary. If the alterations are considerable, it might be better to revoke the settlement *in tòto*, and re-settle; but in the case of personalty this would involve the payment of the *ad valorem* settlement duty over again, which is avoided if the deed only amounts to an alteration of an existing settlement.

hinafter limd, *&c.*, as afsd, and the covts & agrmts hinafter contd had been origlly contd & incorpd in the sd indre of settlemt: AND THIS INDRE FURTHER WITNETH that, for effectuatg the objects afsd, and for the consons hinbfe mentd, the sd A. & B. do and each of them doth in exercise & psuance of the sd power for this ppose given or reserved to them by the sd indre of settlemt as afsd, and of every, *&c.*, hby limit, appt, & direct that All & singr the sd estates, hds, moys, stks, funds, secs, and premes in the sd indre of settlemt comprd, or wch are now by any means subjt to the subsistg uses or trusts of the same indre, or any of such uses or trusts, shl, from & after the exon of these psnts by the sd A. & B., go, remain, & be held & applied to, upon, for, & subjt to such uses, trusts, powers, & provons as are hinafter limd, *&c.*, of & concerng the same premes resply by way of modificon of or addon to the uses, estes, trusts, powers, & provons by & in the sd indre of settlemt limd, *&c.*, of & concerng the same resply (that is to say), IT IS HBY AGRD & DECLD, &c., *declon & agrmts & covts, &c., effectg modificons in settlmt:* AND the sd A. & B. do & each of them doth hby confirm the power of revocon in the sd indre of settlemt contd, & so that such power of revocon shl extend to the apptmt & provons hrin contd in the same mner as if the same had been hrin repeated with referce thto. IN WITS, &c.

New appointment.

Confirmation of power of revocation.

WILLS (*a*).

CLAUSES.

INTRODUCTORY.

Commencement.

I. I, *testor*, [late of (*b*) ——, & now] of ——, hby revoke all former wills, codls, and testy instrumts (*c*) made by me, & declare this to be my last will.

The same.

II. THIS is the last and only will of me, *testor*, of ——.

Short form.
Concurrent will.

III. I, *testor*, of ——, declare this to be my last will, wch I make for the ppose only of disposg of the este & ppty hinafter mentd, & to the intent that the same shl take effect concurrently with & independently of anor will of even date hrwith, relatg to my ppty situate at, &c., & not in any way affectg the ppty hby disposed of.

Codicil.

IV. I, *testor*, of ——, hby declare this to be a [second] codl to my will, wch bears date the —— day of —— [& the previous codl to wch bears date, &c.].

Direction as to burial (*d*).

V. I WISH to be buried wherever I may happen to die, [*or*, in the family vault at ——,] & that my funl shl be as simple & inexpensive as possible.

(*a*) See 4 Dav. Prec.; Elph. Introd., p. 432 *et seq.* The legislation affecting settlements, for a short reference to which see p. 448, note, and for the details of which see the notes to "SETTLEMENTS," for the most part affects wills also.

(*b*) It may save trouble in establishing the testator's identity, if any past, as well as present address, by which he may be registered in the books of the Bank of England, or any Company, &c., as the holder of any stocks or shares, &c., is given.

As to general clause of revocation.

(*c*) A testamentary paper in the form of a codicil is not revoked by a revocation of the will (*Re Savage*, L. R., 2 P. & D. 78). A general clause in a will revoking all former wills revokes a prior testamentary appointment (*Sotheran* v. *Dening*, 20 Ch. D. 99), whether under a general power (*Re Gibbes*, 37 Ch. D. 143), or a special power (*Re Kingdon*, 32 Ch. D. 604).

(*d*) It may be better not to insert directions as to burial in the will, lest it should not be opened till after the funeral.

Confirmation of marriage settlement (*e*).

VI. I CONFIRM the settlemt [sevl settlemts] exted on my marre [with my psnt wife], & I declare that the provons hby made for my wife & chln [& other issue] are intd to be in addon to & not in satisfon of those made or covted to be made for them resply in & by such settlemt [respive settlemts].

SPECIFIC LEGACIES (*f*).

Stock.

I. I BEQUE to A., of ——, the sum of £—— 2¾ p.c. Consold Stk (*g*) [pt of a larger sum of like stk] now standg in my name.

Another form.

II. I BEQUE to A., of ——, all the stk in the public funds of the United Kingdom of wch I may be possed at my dece, *or*, "all my shares in the —— Co."

Ready money (*h*).

III. I BEQUE to —— all the ready moy wch at my dece may be in my house [or standg to the credit of my current acct at my bankers].

Bond debt.

IV. I BEQUE to —— all the ppal moys & intt wch shl be owing to me at my death on the bond of ——, & also the sd bond & all benefit thof (*i*).

(*e*) The object of this clause is not to supply any defect on the validity of the settlement, but to exclude the presumption of satisfaction of the provisions in the settlement by those in the will. See notes to *Ex parte Pye*, 2 W. & T., L. C. Eq.

Estate duty.

(*f*) The estate duty imposed by the Finance Act, 1894, on personal property of which the deceased was competent to dispose of at his death, which includes personalty over which he had a general power of disposition, s. 22, (2) (a), is to be paid by the executors, s. 6 (2), out of the residuary personal estate, and the specific and pecuniary legatees are not liable to bear any share of it. Where estate duty is chargeable, legacy or succession duty at £1 per cent. is not payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively estate duty has been paid, or under any other disposition under which estate duty has been paid, s. (1). Where settlement estate duty is payable in respect of a settled legacy, that duty has to be borne by the legacy, not by the general estate. See the Finance Act, 1896, s. 19 (1).

(*g*) As to the designation of the 2¾ per cent. Stock, see Vol. I., p. 71, note. A legacy in this form is, of course, liable to be adeemed by the stock being sold; see form of stock legacy not so liable, *infra*, GENERAL LEGACIES.

(*h*) As to gifts of ready money, see 4 Dav. Prec. 99, note; 1 Jarm. Wills, 725, note.

(*i*) It may be convenient to appoint the legatee special executor as to the debt. See below, APPOINTMENT OF EXECUTORS; 4 Dav. 120, note.

Mortgage debt.

V. I BEQUE to —— all the ppal moys & intt wch shl be due or owing or accrug due to me at the time of my death on a mtge of the —— este, *or*, "of hds situate at ——, in the parish of ——, in the coy of ——," *or*, "of ppty belongg to ——," *or as the case may be*, [*if the description of the mtge deed is known, say*, "under an indre, dated, &c.,"] (*a*), & I devise & beque all the hds of whatever tenure [& other ppty] comprd in such mtge unto & to the use of the sd ——, his hrs, exs, ads, & assns, accordg to the nature thof resply, subjt to the equity of redmon subsistg thrin (*b*).

Release of debt to debtor (*c*).

VI. I RELE & forgive to ——, or to his repves if he shd die in my lifetime, the sum of £—— now due to me from him on his bond, [on mtge of ppty at, &c.,] or so much thof as may remain owing to me at my death, & all intt for the same, & I direct that the sd bond shl be cancelled & given up to him or them, [*or*, that the hds & ppty comprd in such mtge shl be reled & reconveyed accdly, dischged from the sd mtge debt & intt, & all claims in respt thof].

Release of all debts owing from legatee.

VII. I RELE & forgive to ——, or to his repves if he shd die in my lifetime, all & every ppal sums or sum & intt whatsr, [*or*, all intt owing to me at my dece on any ppal sums or sum] wch may be owing from him or them to me at my dece on the

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(*a*) See note (*i*) on p. 683.

As to assent by executors to gift of mortgage.

(*b*) By the C. A., 1881, s. 30 (repealed as to copyholds to which the mortgagee has been admitted, by the Copyhold Act, 1894, s. 88, re-enacting the Copyhold Act, 1887, s. 45), the legal estate in mortgage estates of inheritance devolves on the personal representative of the deceased mortgagee, "notwithstanding any testamentary disposition," "as if the same were a chattel real." The effect seems to be that where the Act applies, the personal representative may assent to a specific devise of the mortgage debt, together with the mortgaged estate, so as to give effect to it without any conveyance.

As to forgiveness of debt.

(*c*) The forgiveness of a debt is in law a legacy, and liable to ademption, and to lapse by the death of the legatee in the testator's lifetime (unless this is expressly provided for, as in the text), and is chargeable with duty. If the debt has been forgiven before the date of the will, this should be declared, as in form VIII., so as possibly to avoid duty. If the debt was forgiven within a year from the testator's death, estate duty under the Finance Act, 1894, s. 2, (1) (c), would be payable in respect of it. It might be as well, therefore, to state the date of the forgiveness. For a provision where a legacy is given in trust for the debtor and his family, see *infra*, and 4 Dav. Prec., p. 108. That a debt is extinguished at law by the appointment of the debtor as executor (even though he does not prove the will, see *Re Applebee*, [1891] 3 Ch. 422), and that any claim in equity may be rebutted by evidence of the testator's intention to forgive the debt, see *Strong* v. *Bird*, L. R. 18 Eq. 315; *Re Applebee, ubi supra*.

secy of any bond or bonds, bill or bills, note or notes, or orwise howsr, & I direct that every such bond, bill, note, or other secy shl be reled & given up to the sd —— or his repves, [*or*, & I direct that he or they shl be allowed time for paymt of such ppal sums or sum by yrly instalmts not exceeding £—— each, commencg at the end of a yr from my death].

Variations where the interest only is released, and time given for payment of principal.

VIII. I DECLARE that all sums at any time or times adveed or pd by me to or on acct of —— were intd by me as gifts or have since been so treated or forgiven by me, & that nothing is now due to me from the sd —— in respt of any such adves or paymts, & no claim shl or can be made agst him, or his este if dead, in respt thof.

Declaration that sums advanced by testator were gifts, or have been forgiven (*d*).

IX. I BEQUE to —— all my watches, jewellery, trinkets, & psonal ornamts.

Jewellery, &c.

X. I BEQUE to my wife, ——, by way of confirmon of her title thto, all jewels, trinkets, watches, psonal ornamts, wearg apparel, & paraphernalia in her posson or belongg or claimed by her as belongg to her.

Bequest to wife of her jewellery and paraphernalia in confirmation of her title (*e*).

XI. I BEQUE all my wearg apparel [except lace & furs] to my servant, ——, if she shl be in my service at the time of my death.

Wearing apparel.

XII. I BEQUE to —— all my wines, liquors, provons, & consumable stores.

Wines and consumable stores (*f*).

XIII. I BEQUE to ——, —— dozen of my wines, to be selected by him.

Wines to be selected.

XIV. I BEQUE to —— my carriages, horses, harness, saddlery, & stable furniture, *or*, "any one of my carriages, & any pair of my horses, with harness for the same, to be selected by him."

Horses, &c.

XV. I BEQUE to —— all my acct books, lres, papers, memda, & manuscripts, except deeds & docs of title & secs for moy.

Papers and MSS.

(*d*) See last note.

(*e*) As to what articles constitute a wife's paraphernalia, see *Graham* v. *Londonderry*, 3 Atk. 394; *Jervoise* v. *Jervoise*, 17 Beav. 566; *Re Breton*, 17 Ch. D. 416. A husband has no power to bequeath his wife's paraphernalia away from her (*Northey* v. *Northey*, 2 Atk. 77; *Tipping* v. *Tipping*, 1 P. W. 730). See further as to paraphernalia, Williams on Personal Property, p. 482; 1 White & Tudor, L. C. Eq., notes to *Hulme* v. *Tenant*.

Paraphernalia.

(*f*) Consumable stores should of course from their nature be given absolutely, and a gift of them for life would be an absolute gift: see 4 Dav. Prec., p. 71, note; 1 Jarm. Wills, 839, unless they formed part of the testator's stock-in-trade, *Phillips* v. *Beal*, 32 Beav. 25; *Cockayne* v. *Harrison*, L. R. 13 Eq. 432.

As to gifts of consumables.

Request to destroy letters, &c.

XVI. I REQT —— to examine all my lres, lre-books, & papers, & to destroy such of the same as he shl consider ought not to be preserved, & I declare that it shl be in his entire discron whether to show or disclose the same or the contents thof to any other pson (*a*).

Furniture and personal effects, &c. Full form (*b*).

XVII. I BEQUE to —— all my watches, jewels, trinkets, psonal ornamts, & wearg apparel, & all my furniture (*c*), plate, plated goods, linen, glass, china, books [except books of acct], manuscripts, pictures, prints, statuary, musical instrumts, articles of vertu, & all other articles of psonal, domestic, or househd use or ornamt, wines, liquors, & consumable stores & provons, & all my horses, carriages, harness, saddlery, & stable furniture, & all my plants & garden tools & implemts, [& farmg stk both live & dead].

The same. Short form (*d*).

XVIII. I BEQUE to —— all articles of psonal or domestic or househd [or stable or garden] use or ornamt belongg to me.

Effects in house. Full form.

XIX. I BEQUE to —— all the furniture, &c., *as in form* XVII., wch at the time of my death shl be in, about, or belongg to or appropriated or ordered for my house at ——, or any other house in wch I may reside [wch may be my ppal place of residce] at my dece, or the outbldgs, stables, coach-houses, gardens, or pleasure-grounds thof.

The same. Short form.

XX. I BEQUE to —— all the effects, other than moy or secs for moy (*e*), & deeds & docs of title, wch shl at the time of my death be in or about my dwg-house.

Bequest to wife of

XXI. I BEQUE to my wife —— such articles of furniture,

As to gifts of papers and letters.

(*a*) This form would not, of course, prevent the executors from examining the papers if they think fit. If it is wished to prevent this, the papers should be bequeathed and the legatee made special executor as to them. See below, APPOINTMENT OF EXECUTORS. As to property in letters, see *Thompson* v. *Stanhope*, Amb. 737; *Pope* v. *Curl*, 2 Atk. 342; *Gee* v. *Pritchard*, 2 Swanst. 402; *Perceval* v. *Phipps*, 2 V. & B. 19; in lectures, see *Caird* v. *Sime*, 12 A. C. 326.

(*b*) As to the application of the *ejusdem generis* rule to a gift of "furniture, goods and chattels," see *Manton* v. *Tabois*, 30 Ch. D. 92.

(*c*) A bequest of furniture will not pass tenants or other fixtures: *Finney* v. *Grice*, 10 Ch. D. 13; if intended to be included, they must be expressly mentioned.

(*d*) As to what passes by this, see 1 Jarm. Wills, 712, note.

(*e*) *Choses in action*, such as securities for money, do not, generally speaking, pass under a gift of the effects in or contents of a house; *secus*, where the gift is of the contents of a desk, or place where valuables are usually kept: *Re Robson*, [1891] 2 Ch. 559.

plate, or other effects of domestic or househd use or ornamt as she shl within —— calr months from my death select, to a value not exceedg £——, such value in case of dispute to be determined by my exs in such mner as they shl think pper.

furniture, &c., to be selected by her.

XXII. I AUTHORISE my exs to sell to my wife —— at a valuon to be made in such mner as they shl think fit, all or any pt of my furniture, plate, & other househd effects, & to allow the pchase-moy to be pd by instalmts or orwise, with intt at such rate & in such mner as they shl think fit, with or witht takg secy, & I declare that the pchase-moy for the same shl form pt of my residuary este.

Special power to sell furniture to wife at valuation.

XXIII. I BEQUE the use & enjoymt of all my furniture, &c., *or as the case may be,* to my wife —— durg her life [widowhood], she keepg the same pperly insured agst fire, & I declare that after her death [or re-marre] the same shl fall into my residuary este; And I declare that it shl not be necy to take an inventory thof, & that my exs shl not be concerned to see to the insce thof, or be liable for any loss or damage that may happen thto from any cause whatsr.

Furniture or other effects to wife for life or widowhood without trustees.

No inventory.

XXIV. I BEQUE all, *&c.*, to, *trees,* in trust to permit my wife —— to have the use & enjoymt thof durg her life [widowhood], she keepg the same pperly insured agst fire & in good repair & preservon, reasble wear & tear excepted; & after her death [or re-marre], upon trust for ——; And I direct that an inventory of the same effects & premes shl be made in duplicate as soon as may be after my death by my trees (*f*) at the expse of my este, & that one copy thof shl be signed by my trees & kept by my sd wife, & one copy signed by my sd wife & retained by my trees: Provd always, & I declare that my trees shl not be concerned durg the lifetime [widowhood] of my sd wife to see to the insce or preservon of the sd effects & premes, or any of them, or be liable for any loss or damage that may happen thto from any cause whatsr: Provd always, & I declare that it shl be lful for my sd wife at any time, with the consent in writg of my trees, to sell any pt of the sd furniture & effects, & to apply the proceeds in the pchase of

Furniture or other effects to wife for life or widowhood.

Inventory to be made.

Power of sale.

(*f*) It is assumed throughout these forms that "trees" is defined as including a sole trustee. If this is not done, the expression "trees or tree" should be used.

other effects of a like nature to be held upon the same trusts].

Furniture &c., to married woman, excluding her husband, and her power of alienation during coverture (*a*).

XXV. I BEQUE all, *&c.*, to, *trees*, upon trust to permit, *legatee*, to possess, use, & for her septe use enjoy the same durg her life, & after her death upon trust for such pson or psons & for such pposes as the sd, *legatee*, shl, while discovert by deed or writg, or whether covert or discovert by will or codl, appt, & in default of & subjt to any such apptmt, if the sd, *legatee*, shl die discovert, in trust for the sd, *legatee*, but if she shl die covert, in trust for such pson or psons as wd have become entled thto under the statutes for the distribon of the psonal estes of intestates at the time of her death if her husbd had died immedly bfe her, & she had died possed thof & intestate, such psons, if more than one, to take as tenants in common in the shares in wch they wd have taken under the same statutes: Provd always & I declare that the sd, *legatee*, shl not durg coverture, have power to alienate or dispose of her life or revy intt in the sd furniture & effects, or any of them: *Provons as to insce & inventory, & proton of trees from liability, & power of sale, as in last form, mutatis mutandis.*

Furniture, &c., in trust for children to be divided among them on their all attaining twenty-one, or marrying. Full form.

XXVI. I BEQUE all my furniture, plate, plated articles, books, pictures, prints, & other househd & domestic effects to, *trees*, upon trusts (so long as any child of mine shl be under the age of twenty-one yrs & unmarried) to permit the same, or any of them, to be used & enjoyed by my chln, or any of them, or by any pson or psons for their, his, or her benefit, under such restrons & in such mner as my trees may think fit, & to cause such pts (if any) of the sd furniture & effects as may not be so used to be preserved & taken care of at the expse of my genl este, & upon further trust, so soon as all my chln shl have attned the age of twenty-one yrs or married or died under that age, to divide such furniture & effects among such of my chln as shl have attned the age of twenty-one yrs, or married, or their exs, ads, or assns, as nearly as may be in eql shares, & with an absolute discron as

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(*a*) This somewhat elaborate trust is intended to give the legatee full power of disposition while discovert, but to restrict her power during coverture. As to this restriction, and as to the form and effect of gifts to married women since the M. W. P. A., 1882, see p. 466, note (*b*).

to the mode of effectg such divon, wch shl not be questioned on the ground of any alleged inequality or orwise: PROVD ALWAYS & I declare, that it shl be lful for my trees, eir immedly after my death or at any subseqt time or times, with the consent of such of my chln (if any) as shl for the time being have attned the age of twenty-one yrs, or their respive exs or ads, to sell any pt or pts of the sd furniture & effects wch may not appear likely to be of any special value to my chln, or wch it may be inconvenient or expensive to preserve for them, in wch case the proceeds thof shl form pt of my residy psonal este; PROVD ALSO, that it shl be lful for my trees, at any time bfe the afsd period of divon, to make over any portion of such furniture & effects to any child of mine who shl have attned the age of twenty-one yrs or married, as pt of his or her share or expectant share thrin, & also to deliver any articles wch may be deemed suitable to any child, notwg that he or she may be a minor; AND I DIRECT my trees to have inventories prepared of such pts of the sd furniture & effects as they may deliver to my chln or any of them, or to any pson or psons for their respive use, bfe the final divon thof (except such of the same effects as, from their triflg value or perishable nature or for any other reason, my trees may in their uncontrolled discron consider unnecy to include in such inventories) & to cause such inventories to be signed by the psons to whom such furniture & effects shl be delivered: And I give my trees an absolute discron as to the insce of the sd furniture & premes, And I declare that after causg such inventories as afsd to be made, my trees shl not be concerned to see to the custody or preservon of the sd furniture & premes, or be liable for any loss or damage happeng thto.

Provision for indemnity of trustees of settled furniture.

XXVII. PROVD ALWAYS & I declare that my trees shl not be bound to see to the insce, custody, or preservon of the sd furniture & other effects comprd in the beqt hinbfe contd, or to interfere in any way in relon thto, [further than to require such inventory to be made & signed as afsd], & shl not be responsible for any omission, neglect, or default on the pt of the pson or psons entled to the use or enjoymt thof, or orwise in relon thto, or for any loss thof, or damage thto from any cause whatsr, but my trees shl nevs be at liberty at any time, if they shl think fit, to interfere for the proton of the sd furniture & premes.

Bequest of specific articles by reference to a separate paper (*a*).

XXVIII. I BEQUE to A., of ——, or in case he shd predece me, then to B., of ——, all my furniture, jewellery, & other articles & effects of househd or psonal use or ornamt with the reqt & in the confidce that he will dispose of the same in accdce with any mem or paper signed by me & deposited with this my will, or left among my papers at my death, but such mem shl not be deemed to form pt of my will or to have any testy character, & the above expression of my wishes as to the disposal of the sd articles & effects shl not create any trust or legal obligon.

SPECIFIC DEVISES (*b*).

Specific devise of freeholds

I. I DEVISE to A., of, &c., his hrs & assns (*c*), all my freehd [copyhd] messe, or tenemt, with the outbldgs & lands belongg

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As to a bequest by reference to a separate paper.

(*a*) In the common case where the testator or testatrix wishes to parcel out his or her jewellery, furniture, &c., among numerous friends and relations, the most convenient plan, in order to avoid incorporating this in the will, and so as to facilitate alterations, is to bequeath the articles, as in the above form, to some person who may be trusted to carry out the intended disposition. As the bequest operates in law as an absolute one, it is desirable that the legatee should be some near relation, to save duty. The separate paper containing the desired disposition of the articles, should be signed, but not attested; and can be altered as circumstances require; and it will not have to be incorporated in the probate. As to referring in the will to separate papers, see 4 Dav. Prec. 303, xliii.; 1 Jarm. Wills, 99 *et seq.*

(*b*) For devises in tail, see DEVISES IN STRICT SETTLEMENT. The provisions of the L. T. A., 1897, s. 1 *et seq.*, relating to the devolution of real estate other than copyholds, &c., on death, must be remembered—see Vol. I., p. 488; but, shortly speaking, on the death of any person the real estate vested in him without a right in any other person to take by survivorship, devolves on his death, and vests in his personal representatives or representative as if it were a chattel real, who have to administer it as if it were a chattel real, except that one only of several personal representatives cannot sell or transfer it without the authority of the Court; but nothing in the Act is to alter the order in which real and personal assets are to be applied in administration. The personal representatives may at any time assent to the devise, or may convey it to the person entitled thereto, and may make the assent or conveyance either subject to or with a charge for all the moneys which they are liable to pay, and in the former case all their liabilities in respect of the land are to cease, except as to acts done or contracts entered into before the assent or conveyance. After the expiration of one year from the to or held with the same, situate, &c. [& commonly known as ——], now in the occupon of ——, with the appurts thof (*d*).

or copyholds in fee.

Specific devise and bequest of real and leasehold estates in certain counties, &c.

II. I DEVISE & beque all & every my freehd, copyhd, & leasehd messes, lands, tenemts, & hds, situate & being in the sevl parishes of, &c., or elsewhere, in the counties of, &c., *or*, "in the sevl parishes & places follg (that is to say), &c.," UNTO A., of, &c., his hrs, exs, ads, & assns, accdg to the tenure thof resply.

Devise of freeholds or copyholds to a woman for her separate use with restraint on anticipation (*e*).

III. I DEVISE all, &c., *pcels,* with the appurts thof, unto & to the use of A. [the wife of B.], of, &c., her hrs & assns, for her septe use, but so that durg [her psnt or any future] coverture she shl not have power to dispose of or chge the sd hds & premes, or the future rents & profits thof by way of anticipon.

Devise to children of testator or another

IV. I DEVISE all, &c., *pcels,* TO THE USE of all or any my chln or child who shl be livg at my dece, [the chln or child of —— deced, who shl be livg at my dece, or born aftwds], their, his, or her respive hrs & assns, if more than one in eql shares as tenants in common, & if & so often as any such child shl, being

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death the Court has power to order the land to be conveyed to the person entitled thereto.

Registered land.

Where the land is registered the personal representatives can be registered on the production of the probate or letters of administration: L. T. R., 128. Where a settlement is created by the will of a sole registered proprietor, the personal representative, with the consent of the tenant for life, if of full age, is to deliver at the Registry the probate or letters of administration, and a written application for the registration of a proprietor with the proper restrictions and inhibitions: L. T. R. 131.

These provisions will render no alteration in the common forms of devise necessary.

(*c*) As an estate in fee simple may now by the C. A., 1881, s. 51, be limited in a deed by those words, without the word "heirs," in the same manner as in a will, it would be better, if that form of limitation (which, however, has no advantage in brevity) should come into general use in deeds (as it has to a considerable extent), to use it in wills also.

General words.

(*d*) If the testator has other property adjoining, say, "with the rts, easemts, & appurts thto belongg or reputed to belong or thwith held or enjoyed"; see *Polden* v. *Bastard*, L. R. 1 Q. B. 156, and the cases there cited; as to the right to light in a similar case, see *Phillips* v. *Low*, [1892] 1 Ch. 47; and see *infra*, p. 696, form XXII. This is not affected by the C. A., 1881, s. 6, implying the usual general words in conveyances, as a will is not a "conveyance" within the Act; see s. 2 (v.).

If so intended add bequest of rents as at page 697, form XXIII.

(*e*) As to gifts to married women under the M. W. P. A., 1882, see p. 466, note. The restraint on anticipation may be effectually annexed to a devise in fee. *Baggett* v. *Meux*, 1 Phil. 627.

deceased person as tenants in common in fee with cross limitations over on death under 21, &c. (*a*).

a son, die under the age twenty-one yrs, or being a daur, die under that age & witht havg been married, then as well as to the origl share of the child so dying, as to any share or shares wch shl have accrued to him or her by virtue of this psnt limon, To THE USE of the others or other of such chln as afsd, their, his, or her respive hrs & assns, if more than one in eql shares as tenants in common: AND IN CASE there shl be no such child as afsd, or all such chln if more than one, or such child, if only one, shl die under the age of twenty-one yrs, & in the case of a daur or daurs witht havg been married, then, as to the entirety of the sd premes, To THE USE of, &c.

Proviso that devise to a class of children shall include child dying before testator leaving issue (*b*).

V. PROVD ALWAYS, & I declare that in case any child of mine [of the sd ——] shl die in my lifetime leavg issue survivg me, the devise hinbfe contd to my chln [the chln of the sd ——] shl take effect in the same mner as if the child so dying had survived me, & died immedly after me, & so that the share or shares of the sd hds & premes devised to him or her, or wch he or she wd have taken if survg me, shl devolve upon his or her hrs or devisees as pt of his or her este accdly.

Devise with provision against lapse in case of devisee leaving issue (*b*).

VI. I DEVISE all, &c., *pcels*, To THE USE of A., his hrs & assns, in case he shl survive me, or die in my lifetime leavg issue survg me, & so that in the latter case the sd hds & premes shl devolve upon his hrs or devisees, as pt of his este, in the same mner as if he had survived me & died immedly after me.

Proviso against lapse in case of devisee leaving issue (*b*).

VII. PROVD ALWAYS, & I declare that, in case the sd —— [any of them the sd ——, ——, & ——] shl die in my lifetime leavg issue livg at my death, the devise hinbfe made to him shl not lapse, but shl take effect in favour of his hrs or devisees, & the premes so devised shl become pt of his este in the same mner as if he had survived me & died immedly after me.

Devise to a person or his

VIII. I DEVISE all, &c., *pcels*, To THE USE of A., his hrs & assns; but in case he shl die in my lifetime, then I devise the

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(*a*) This form is not adapted to a devise to the children of another living person who takes no life estate. See below, TRUSTS FOR CHILDREN.

(*b*) These clauses are intended to operate in a similar manner to the 33rd section of the Wills Act, so as to make the property devolve as part of the devisee's estate. See, *infra*, p. 709, note, and TRUSTS FOR CHILDREN.

same premes To THE USE of his chln or child, if any, who shl be livg at my death, their, his, or her respive hrs & assns, if more than one in eql shares as tenants in common.

children by substitution.

IX. I DEVISE all, &c., *pcels*, To THE USE of, *infant*, his hrs & assns; but in case the sd, *infant*, shl die in my lifetime [(*d*) witht leavg issue who shl be livg at my dece], or shl survive me & aftwds die under the age of twenty-one yrs witht leavg issue livg at his dece, then I devise the same premes To THE USE of ——, his hrs & assns.

Devise to infant with gift over on death under age without issue (*c*).

X. I DEVISE all, &c., *pcels*, To THE USE of A., his hrs & assns, & if he die witht issue livg at his death, To THE USE of B., his hrs & assns.

Specific devise with gift over on death at any age without issue (*e*).

XI. I DEVISE all, &c., *pcels*, To THE USE of my wife, C., durg her life [widowhood] (*f*), & from & after her dece [or future marre] To THE USE of my sons, D. & E., their hrs & assns for ever, as jt tenants [*or*, in eql shares as tenants in common].

Devise to wife for life, with remainder to two persons jointly or in common.

XII. I DECLARE that such of my daurs as shl for the time being be spinsters shl be entled to the psonal use, occupon & enjoymt, free from [rent,] rates & taxes for the period of twelve months after my death (in case they shl resply desire the same) of my residce situate, &c., or any other dwg-house in wch I may reside at my death, togr with the stables, coach-house, gardens, pleasure-grounds, & appurts thto belongg or therewith held, & the furniture & effects of domestic, stable, or garden use or ornamt wch at the time of my death shl be in or about the same or appropriated thto, they or she keepg the same in good tenantable repair & condon, & insured agst fire, but witht liability for fair wear & tear: AND

Devise of house and furniture for use of unmarried daughters for limited period.

(*c*) The powers of management and maintenance, &c., during the minority would be supplied in this case by the C. A., 1881, s. 42; see p. 610, note; and the powers of leasing and sale, &c., by the S. L. A., 1882 to 1890; see p. 614, note (*c*).

(*d*) The words in brackets will be proper where the legatee is a child of the testator, and it is intended that the 33rd section of the Wills Act shall apply.

(*e*) As to executory limitations of this kind, see C. A., 1882, s. 10; and see *Re Parry*, 31 Ch. D. 130, for a case of a gift over of realty following a devise in fee on the death of the devisee without leaving issue. As to a similar gift of personalty, see *Re Ball*, 36 Ch. D. 508.

(*f*) For variations imposing the obligation on tenant for life to keep in repair, &c., see BEQUESTS OF LEASEHOLDS, &c., *infra*, pp. 697 *et seq.*

SUBJT thto I devise & beque the same hds, effects & premes unto my son K., his hrs, exs, ads & assns absolutely, *or*, "I declare that the same shl form pt of my residy real & psonal este, & shl pass by the genl devise & beqt thof hinafter contd."

Devise to uses in favour of illegitimate child so as to prevent escheat (*a*).

XIII. I DEVISE, &c., to such uses, upon such trusts, & subjt to such powers & provons as A., of, &c., shl by any deed or deeds revocable or irrevocable or by will or codl appt; & in default of & subjt to any such apptmt, TO THE USE of the sd A. in tail, with remr TO THE USE of my own rt hrs.

Gift for life, subject to condition of residence (*b*).

XIV. I DEVISE my mansion-house of —— at ——, with the outbldgs, gardens, grounds, & lands occupied by me thwith, to A., of, &c., until he shl die or cease to make the same his ppal residce; And from & after his death, or ceasg to make the sd premes his ppal residce, I devise the same, &c.

Devise of advowson (*c*).

XV. I DEVISE my advowson of —— to, *trees*, their hrs & assns, UPON TRUST, if & so often as a vacancy in the sd livg shl occur bfe the said advowson shl be sold under the trusts hinafter decld concerng the same, to present some duly qualified pson thto; & I declare that if, on the occurce of any such vacancy, my son —— shl be duly qualified & willg to hold such livg, & shl, in the judgmt of my trees, be a fit

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(*a*) If the property were limited to the devisee in fee, and he were to die without issue, and without having disposed of it *inter vivos* or by will, it would escheat whether his interest is legal or equitable, and whether the property is corporeal or incorporeal (47 & 48 Vict. c. 71, s. 4). The object would of course be defeated if the devisee were to appoint to himself in fee. As to escheat in the case of enfranchised copyholds, see Copyright Act, 1894, s. 21 (1) (b), replacing the Copyhold Act, 1887, s. 4.

As to conditions of residence.

(*b*) Possibly a condition in this form would be binding on an infant: *Partridge* v. *Partridge*, [1894] 1 Ch. 351. A condition as to residence (as to which see *Re Moir*, 25 Ch. D. 605) is operative, notwithstanding s. 51 of the S. L. A., 1882, until a sale (*Re Haynes*, 37 Ch. D. 306), or a lease under the powers of the S. L. A., 1882 to 1890, but does not affect the power of sale and other powers of the tenant for life under the Acts who, notwithstanding the condition, would be entitled to the income of the proceeds of sale during his life (*Re Paget*, 30 Ch. D. 161). Possibly the object in view might be obtained by vesting the estate in trustees during the life of the intended devisee, and giving him the right to a lease of the mansion, &c., at a nominal rent, forfeitable in case of non-residence. It need hardly be stated that a condition as to the residence is extremely mischievous.

(*c*) See another form, 4 Dav. Prec. 547. The trusts are not affected by the Benefices Act, 1898 (61 & 62 Vict. c. 48). As to Roman Catholics, see 3 Jac. 1 c. 5, ss. 18-21; 1 Will. 3, c. 26; 13 Anne, c. 13; 11 Geo. 2, c. 17, s. 5.

& pper pson to hold the same, my trees shl present him thto ; & upon further trust, durg the incumbcy of my sd son, or durg the incumbcy of any other pson with the consent of my sd son if livg, to sell the same advowson, & hold & apply the net proceeds thof in the same mner & upon the same trusts as if the sd advowson had been comprd in the devise of my residy real este hinafter contd.

Devise subject to legacies or annuities.

XVI. I DEVISE all, &c., TO THE USE of ——, his hrs & assns, subjt to & chged with the paymt of a legacy of ——, to ——, with intt thron at the rate of —— p.c. p.a. from my death, & a legacy, &c., [*or*, "of an anny of £—— durg his life, to commce from my death, & to be payable, &c.," *see* "ANNUITIES," p. 720, *form* I., *or*, "subjt nevs to the paymt of the sevl annies, or rent-chges, legacies & duty hby chged upon & made payable out of the same hds & premes, & to all powers & remedies for recoverg & raisg the same resply."]

Devise subject to mortgage (*d*).

XVII. I DEVISE all, &c., TO THE USE of ——, his hrs & assns, subjt to & chged (in exoneron of my psonal este & my other real este, if any, chged thwith), with the paymt of all ppal moys & intt specifically chged thron by any mtge or mtges, & any other chges & incumbces affectg the same at my death.

Declaration that specifically devised estates shall be taken subject to charges.

XVIII. AND I DECLARE that all sums specifically chged on the —— estes, or any pt thof at my death, shl as betwn the psons takg the same estes under this my will, & the psons intted in my psonal este & my other real este under this my will, or any codl hto, be considered as exclusively chged on the —— este, in exoneron of my psonalty & other real este.

As to the Real Estate Charges Acts.

(*d*) As to the incidence of a mortgage debt as between the mortgaged estate and the testator's other assets, prior to Locke King's Act (17 & 18 Vict. c. 113), and the effect of that Act and the subsequent Acts of 1867 (30 & 31 Vict. c. 69) and 1877 (40 & 41 Vict. c. 34) (the short title of which is now "the Real Estate Charges Acts"), see 4 Dav. Prec. 249. As to what is a "contrary or other intention" within the meaning of the Acts, see *Re Smith*, 33 Ch. D. 195, dissenting from *Brownson* v. *Lawrance*, L. R. 6 Eq. 1, and following *Gibbins* v. *Eyden*, L. R. 7 Eq. 371, and *Sackville* v. *Smyth*, L. R. 17 Eq. 153. See also *Re Fleck*, 37 Ch. D. 677 ; *Re Campbell*, [1893] 2 Ch. 206. By virtue of s. 1 of the Act of 1877, the Acts now extend to leaseholds ; *Re Kershaw*, 37 Ch. D. 674, where a legatee of a leasehold house was held liable to pay the purchase-money in respect of a contract by the testator to purchase the leasehold reversion. The intention as to how a mortgage debt or any other charge on specifically devised property is to be borne, should always be expressly stated and not left to implication.

Devise free from mortgage debt.

XIX. I DEVISE all, &c., to the use of A., of, &c., his hrs & assns, free & dischged from all the ppal moys & intt chged thron by an indre dated, &c., wch I declare shl be pd out of my psonal este in exoneron of the sd hds & premes.

Devise of freeholds contracted to be purchased.

Purchase-money, &c., to come out of personal estate.

XX. I DEVISE & beque to ——, his hrs, exs, ads, & assns, the messe, &c., wch is held by me under a lease dated, &c., but of wch I have lately contracted for the pchase of the freehd: And I direct that in case the pchase of the freehd of the same premes shl not have been completed in my lifetime, all pchase-moy for the same & all costs & expses incident to the complon of such pchase shl be pd out of my genl psonal este (*a*).

Devise to uses of settlement.

XXI. I DEVISE all my freehd messes, lands & hds situate in the parishes of —— & ——, in the coy of ——, TO THE USES, upon the trusts, & subjt to the powers & provons decld & contd by & in an indre of settlemt dated, &c., & made, &c., concerng the freehd hds thby settled, or such of the same uses, trusts, powers, & provons as shl at the time of my death be subsistg or capable of takg effect, but not so as to increase or multiply chges or powers of chging.

Clause annexing easements to specifically devised properties (*b*).

XXII. I DECLARE that as to all ways, paths, passages, water-courses, & other convenices of the nature of easemts wch at my death shl be used or enjoyed with or for the benefit or accommodon of any of the hds & premes hinbfe devised, or the tenants or occupiers thof, in, over or upon any pt or pts of the sd devised premes, the like rt of user thof resply for the pposes & to the extent to wch the same shl be so enjoyed shl be annexed as easemts to the respive premes with wch the same shl be so used & enjoyed resply, AND I DEVISE such respive easemts accdly with & so that the same may be annexed to & follow the destinon under this my will of such respive premes to the intent that the convenices & advantages in the nature of easemts wch at my death shl be in use as betwn the different portions of the sd devised premes, & conducg to the better & more convenient enjoymt & occupon

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(*a*) This clause is intended to meet the case of *Re Kershaw*, 37 Ch. D. 674; see last note.

(*b*) As to the importance of inserting such a clause as this in a proper case, see *Taws* v. *Knowles*, [1891] 2 Q. B. 564. Where there is a devise of land to one, and of a house with windows overlooking the land to another, the former cannot block up the windows of the house: see *Phillips* v. *Low*, [1892] 1 Ch. 47.

thof resply, may be perpetuated on the footg of legal rts & easemts for the use & benefit of the sevl psons intted under this my will & their respive tenants, & if any question shl arise as to the easemts or rts existg by virtue of the dirons lastly hinbfe contd, I empower my exs by deed to define & determine the same, & so that such determinon shl be conclusive & bindg on all psons intted.

Bequest of rents due to testator at his death (*c*).

XXIII. I BEQUE to —— all rents & profits wch shl be due or accruing due to me at the time of my death from or in respt of the estes & hds situate, &c., hinbfe devised to the sd——, *or*, "of wch I am tenant for life," subjt to the paymt throut of all rates, taxes, outgoings, & expses wch may be due or owing or accruing due at my death in respt of or wch in the ordinary course of managemt may be pperly chgeable agst the same estes & hds.

BEQUESTS OF LEASEHOLDS, ETC. (*d*).

Specific bequest of leaseholds.

I. I BEQUE my leasehd messe, with the gardens, pleasure-grounds & lands held thwith, situate at —— [*or*, my leasehd messe, with the outbldgs & stablg belongg thto, situate & being No. ——, in —— Street], in the parish of ——, in the coy of ——, with the appurts thof (*e*), unto A., of, &c., for all the residue wch shl be unexpired at my dece of the term for wch the same premes are holden "subjt to the rent reserved by, &

(*c*) This bequest of arrears of rent and accruing rents (subject to outgoings) to the specific devisee of the estate, or to the next remainderman where the testator is only tenant for life, would generally accord with the intention, and is useful, as it saves the necessity for any apportionment of the rents, &c. As to what outgoings ought to be deducted under such a clause, see *Re Cleveland*, [1894] 1 Ch. 164; and see 38 Sol. J. 91.

As to mortgage debt.

(*d*) As to a devise of real or leasehold property subject to a mortgage or to unpaid purchase-money, see p. 695, note. As leaseholds specifically bequeathed pass to the executor as such, the estate duty upon them under the Finance Act is primarily payable out of the testator's general personal estate, *Re Culverhouse*, [1896] 2 Ch. 251. They vest in the legatee by the assent of the executor without any assignment, *ib.*

As to appurtenances.

(*e*) If the testator has other property adjoining, say, "with the rts, easemts, & appurts thto belongg, or reputed to belong, or thwith held or enjoyed." See p. 691, note (*d*).

the covts & condons contd in the lease under wch the sd premes are holden," *or,* "the sd ——, his exs, ads, & assns, paying the rent reserved by, & pformg & observg at his & their own expse, the covts (*a*) & condons contd in the lease under wch the sd premes are holden, & keepg my genl este indemnified in respt thof."

The same to trustees.

II. I BEQUE my leasehd messe, &c., *as in last form,* unto, *trees,* for all the residue, &c., & subjt to the rent, &c., *as in last form,* upon trust that my trees shl by & out of the rents & profits thof pay the rent reserved by the sd lease, & all other necy outgoings (*b*) in respt thof, & the expses of [keepg the same insured & in good repair & orwise] pformg the covts of the sd lease, & upon further trust, &c.

Bequest of leasehold house and furniture. Short form.

III. I BEQUE unto A., of, &c., absolutely, my leasehd house situate, &c., whrin I now reside, for all my term & intt thrin, togr with all my furniture, fixtures, & househd effects, in, about, or belongg to the same.

Bequest (without trustees) of leasehold house and furniture &c., to

IV. I BEQUE my leasehd messe, &c. (*c*), unto my wife ——, durg her life [widowhood], if my term thrin shl so long last, togr with all the furniture, fixtures, &c., *as in last form,* she, my sd wife, paying the rent, rates, taxes, & outgoings for the time being payable in respt of the sd messe & premes, & keepg the same pperly insured agst fire, & in good repair (*d*),

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As to liability for dilapidations.

(*a*) *Semble,* this would make the legatee liable in respect of dilapidations existing at the testator's death (*Hickling* v. *Boyer,* 3 Mac. & G. 643 ; *Hawkins* v. *Hawkins,* 13 Ch. D. 470) ; *secus* if the gift is for life only (*Harris* v. *Poyner,* 1 Drew. 174 ; *Marshall* v. *Holloway,* 5 Sim. 196 ; *Re Courtier,* 34 Ch. D. 136 ; *Re Baring,* [1893] 1 Ch. 61). As to repairs and improvements of a settled property, see *Brereton* v. *Day,* [1895] 1 Ir. Rep. 518 ; *Re Lever,* [1897] 1 Ch. 32 ; *Re Redding,* [1897] 1 Ch. 876 ; *Re Tomlinson,* [1898] 1 Ch. 232 ; *Re Freman,* [1898] 1 Ch. 28 ; see also the question discussed in 40 Sol. J. 797, 810, 843.

(*b*) *Re Cleveland,* [1894] 1 Ch. 164.

As to change of house.

(*c*) Where a testator gave to his wife the lease of the house in which he should be living at his decease, and subsequently bought a freehold house, where he resided until his death, the latter was held not to pass under the bequest (*Re Knight,* 34 Ch. D. 518) ; but in *Saxton* v. *Saxton,* 13 Ch. D. 359, the freehold reversion, having been purchased after the will, was held on the words of the gift to pass. The intention should be clearly expressed.

Words referring to present time.

A doubt also frequently arises from the insertion of such words as "now in my own occupon," or other *verba de presenti,* as to whether after-acquired land passes, since s. 24 of the Wills Act, making the will speak from the death, does not apply where a contrary intention is shown ; see *Re Champion,* [1893] 1 Ch. 101.

(*d*) As to the importance of expressly providing that the tenant for life shall wife for life or widowhood, with remainder over (*e*).

& duly observg & pformg all the lessee's covts & condons contd in the lease under wch the sd leasehd premes are holden, & also keepg the sd furniture & other effects insured & in a pper state of preservon; & it is my desire that my exs or exor shl see to the insurce of the sd messe, furniture & effects, but witht being in any way responsible for any omission so to do, or for any loss or damage happeng thto from any cause whatsr; & from & after the dece [or second marre] of my sd wife, I beque the sd leasehd premes for all the then unexpired term thrin, & the sd furniture & effects unto my son —— absolutely.

Bequest (without trustees) of leasehold ground-rent for life.

V. I BEQUE unto A., of &c., during his life if my term thrin shl so long last, an improved leasehd ground-rent, issuing out of certain tenemts & hds, situate in, &c., wch I pchased of ——; & I direct that, after the dece of the sd A., the same leasehd premes shl sink into, & become pt of my genl residy este, & pass under the beqt thof hinafter contd.

Leaseholds to trustees for married woman for life, remainder as she may appoint, in default, for her or her next of kin, excluding husband, and re-

VI. I BEQUE all, &c., to, *trees*, upon trust that my trees shl rece the rents & profits thof, & after paying throut the rent reserved by the lease under wch the same premes are held, & all other necy outgoings, if any, & the expse of keepg the same insured agst loss or damage by fire & in good repair, & orwise pformg the covts of the sd lease, shl pay the surplus or net rents & profits thof to, *legatee*, the wife of ——, or shl permit the sd, *legatee*, psonally to occupy & manage the sd premes durg her life as her septe este, but so that, if, & so long as the sd, *legatee*, shl psonally occupy & manage the sd premes, she shl keep the same insured & in such good repair as afsd, & orwise pform the covts of the sd lease, & pay all other necy outgoings, if any, nevs

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repair and insure, see *Woodhouse* v. *Walker*, 5 Q. B. D. 404; *Re Courtier*, 34 Ch. D. 136; *Re Cartwright*, 41 Ch. D. 532; *Re Baring*, [1893] 1 Ch. 61; and note (*a*) on previous page.

Variation for trustees.

(*e*) For a bequest *with* trustees, say, "I beque to, *trees*, my leasehd messe, &c., togr with all the furniture, &c., in trust for my sd wife durg her life [widowhood], she paying, &c.," and say, "my trees," instead of "my exs, or exor," and at the end of the clause say, "I declare that the sd leasehd premes, furniture, & effects, shd be held in trust for my son, &c." That a bequest of chattels real or personal with a gift over can be made without trustees, the gift over operating as an executory bequest, see Fearne, C. R., p. 401. But it is usually better to interpose trustees. For a form providing for setting aside part of the rents of leaseholds as a depreciation fund, see *infra*, p. 737.

straining anticipation.

Full form (a).

my trees shl not incur any liability by reason of her neglectg so to do: And after the death of the sd, *legatee*, my trees shl stand possed of the same leasehd premes in trust for such pson or psons, &c., *as legatee may appt, in default for her or her next of kin, & clause restraing alienon at* p. 688, *form* XXV., *mutatis mutandis.*

Leaseholds to married woman absolutely with a restraint on anticipation.

VII. I BEQUE all, &c., to, *legatee*, the wife of ——, for her septe use absolutely, [but so that durg her psnt or any future coverture she shl not have power to deprive herself of the benefit thof by any sale, mtge, or other disposon by way of anticipon].

Bequest of leasehold farm with farming stock, &c.

VIII. I BEQUE to ——, my farm, called ——, & the farm-house, farm bldgs, & land belongg thereto, as the same are now held by me, under a lease from ——, togr with the live & dead stk, growg & severed crops & produce, furniture, househd goods & effects, & consumable stores & provons, wch shl at the time of my death be in, upon, about, or belongg to the sd farm, or the sd farm-house, bldgs, & premes.

BEQUESTS OF BUSINESS.

Bequest of business (b).

I. I BEQUE to —— the goodwill of my trade or business of ——, & the stk-in-trade, machy, plant, & effects employed thrin or belongg thto, [togr with the lease of the messe or tenemt, shop, manufactory, & bldgs, situate at, &c., in wch the sd business is carried on, or used for the pposes thof,] & the benefit of all contracts subsistg in respt of the sd business, & all book debts, & moys due to me in respt thof, or standg to the credit of my business acct at my bankers at the time of my dece, the sd —— dischgg & indemnifying my genl este from all debts & liabilities due or subsistg in respt of the sd business at my dece, &, if required by my exs enterg into a bond or covt at the expse of my genl este in that behalf, [*add, if desired, apptmt of legatee special exor in respt of,* "the sd business & premes hinbfe bequed to him," *see below,* "APPTMT OF EXS"].

(a) See p. 466, note.

(b) Where a business is bequeathed to successive tenants for life, the question whether losses are to be made good out of capital or out of subsequent profits presents some difficulty; see *Upton* v. *Brown*, 26 Ch. D. 588; *Gow* v. *Forster*, *ib.* 672; *Re Hengler*, [1893] 1 Ch. 586; and as to premiums on policies, see *Re Morley*, [1895] 2 Ch. 738. As to the importance of mentioning book-debts, see *Re Deller*, W. N. 1888, p. 62.

Bequest of share in partnership to a son under a power in the articles of partnership.

II. IN EXERCISE of a power contd in the articles of ptnp of the firm of ——, in wch I am a ptner, dated, &c., or any other power wch may at my dece enable me in this behalf, I hby introduce my son —— as a ptner into the sd firm as from my dece durg the remr of the term of the sd ptnp, subjt to the provons of the sd articles of ptnp, or any other agrmt of ptnp wch may be subsistg at my dece: And I beque unto my sd son my share in the capl, stk-in-trade, assets, goodwill, & profits of the sd firm, he indemnifying my genl este from all debts & liabilities of the sd firm, [& paying to my exs for the genl pposes of this my will my share of the profits of the sd ptnp business & intt on my capl thrin up to the day of my death, as & when the same shl be reced by him]: [*Apptmt of son as special exor in respt of,* "the share & premes hinafter bequed to him," *see below,* "APPTMT OF EXS"].

Power to wind up partnership business.

III. I AUTHORISE my trees (*c*) to concur in windg up the businesses of ——, now carried on by the firm of ——, in wch I am a ptner, or any business in wch I may be a ptner at the time of my death, & for that ppose to make, or concur in makg, arrangemts & compromises with debtors or credors or psons under contract with the firm, & also to dispose of my share in any such business, by valuon or orwise, & genlly on such terms as they shl think fit, with power to postpone such windg up or disposon [until one or more of my sons shl attn the age of twenty-one yrs, or] durg such period as they shl think pper, & with full power to settle any accts, & to accept any statemts of acct, whether with or witht the prodon of any vouchers or other evidce, & to accept, pay, or allow any agrd or estimated sum in satisfon of all or any of my rts or liabilities

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(*c*) Some of the powers under this head may be more properly given to the executors. In case of doubt this may be provided for by inserting the clause at the end of the form. Executors, administrators and trustees are invested with large powers of settling accounts and compromising, &c., by the T. A., 1893, s. 21 (re-enacting s. 37 of the C. A., 1881, but so as to expressly include administrators), which might suffice for ordinary cases; but the clause in the text is much more comprehensive. It appears clear that under a power of this nature the assets may be divided in specie.

& to accept, or concur in acceptg, paymt for my share, or for the whole of any such business, as the case may be, by such instalmts, upon such terms, & in such mner, as they shl think fit; And with power to allow the whole or any pt of my share in the capl of any such business to remain as a loan to the pson or psons for the time being carrying on the same business, [& to lend any further sum or sums of moy out of my este, not exceedg in the whole £——, to them or him,] for such time, under such condons, upon such secy, whether psonal or orwise, & at such rate of intt whether fixed or varying with the profits, as my trees shl think fit, witht being responsible for any loss wch may be occasd thby; And genlly to act in relon to any such business with the same powers & discrons as if they were absolute owners thof, witht liability for any loss wch may be occasd thby; AND I DECLARE that all or any of the powers hby given to my trees in relon to the sd business & premes may, in case & so far as circes may require, be exercised by my exs, & all such powers may be exercised, notwg that any of my trees or exs may be intted as a ptner or ptners in the sd business, or may be beneflly intted under this my will.

Power to continue business forming part of residuary estate alone or in partnership. Full form (a).

IV. PROVD ALWAYS, & I declare that, notwg any of the trusts & provons hinbfe contd, it shl be lful for my trees, in case they in their absolute discron shl think fit so to do, to continue for such period as they shl think desirable, my business of ——, eir alone or in ptnp with any pson or psons who may be in ptnp with me at my dece, or may be subseqtly admitted into ptnp by my trees under the provons hinafter contd, & also at any time to enter into any new arrangemt or agrmt with any such ptner or ptners, eir by way of substiton for, or modificon of, any then subsistg arrangemt or agrmt in relon to such business or orwise, & if deemed expedient to alter or vary the nature or extent of the sd business, & to retain or employ in such business such pt of my residy este (whether in excess of my capl or share of capl engaged thrin at my dece or not) as my trees may from time to time think pper, & at any time to admit, or concur in admittg, as a ptner or ptners into such business any [son or sons of mine, or any other] pson or psons, upon such terms & with or witht the paymt of a premium, as my trees shl think pper: AND I FURTHER DECLARE that my trees may leave the entire managemt of the sd business to any ptner or ptners, so as to be free from the necessity of attendg thto, further than requirg such ptner or ptners to render once or oftener in every yr an acct thof, & witht being obliged to examine into the accuracy of such accts, & may also, in case they shl think pper, leave the entire managemt of such business, or my share thrin, to any manager or managers, at such salary or percentage on the profits of the sd business or my share thrin, & with such powers & authorities as may be deemed pper, And in case any one or more of my trees shl be unwillg to engage in or to become a ptner or ptners in the sd business, on acct of the responsibility wch he or they may incur thby, such tree or trees may allow his or their co-tree or co-trees to engage in or to become a ptner or ptners in such business, & alone to act in the trusts of this my will so far as relates to the carryg on of such business; AND I FURTHER EMPOWER my trees at any time to sell or dispose of the whole or any pt of the sd business, or my share or intt thrin, to any [of my sons, or to any other] pson or psons, for such price or sum to be ascertained by valuon or orwise, & upon such terms as they may think fit: AND I FURTHER DECLARE that, if & when my trees shl wind up the sd business, or shl dispose thof, or of my intt thrin, they may make such arrangemts in relon thto as they may think desirable, with full power to settle accts, & to accept any statemts of acct with or witht prodon of vouchers or evidce, & to leave to any agent, ptner, or other pson or psons the collectg of any outstandg debts, & to give time to any ptner or ptners, or pson or psons pchasg or succeedg to the sd business, for paymt of the capl or other sums owg or belongg or payable to my este in respt thof, or to lend any sum [not exceedg £——] out of my residy psonal este, & from time to time to continue the loan thof to him or them, eir alone or jtly with his or their ptner or ptners for the time being, durg such period as my trees shl think pper, & eir with or witht takg secy for the same in addon to the bond or covt of such ptner or ptners, or pson or psons as afsd, upon the footg of receivg in respt thof eir a fixed rate of intt, or a rate varyg with or dependent upon the profits of the sd business, & genlly to exercise the same powers & discrons in relon to the sd business & premes as if actg on their own acct & so as to be free from all responsibility, & to be fully indemnified by my este in respt of any loss arisg in relon thto (*a*): AND I FURTHER DECLARE that all profits or intt accruing to my este from the carrying on of the sd business, or from the employmt of my capl or any pt of my este thrin on the footg of a loan or orwise, shl be treated & applied as income of my residy estate (*b*). *Add clause at end of form* III.

(a) As to executors or trustees carrying on a business, see Lindley on Partnership, p. 606; *Strickland* v. *Symons*, 22 Ch. D. 666; 26 Ch. D. 245; *Re Evans*, 34 Ch. D. 556. As to the right of executors to indemnity, and the rights of creditors, see *Dowse* v. *Gorton*, [1891] A. C. 190.

The same. Short form.

V. I AUTHORISE my trees to carry on, [*or*, join in carrying on], the trade or business of ——, now carried on by me [the firm of ——, in wch I am a ptner], durg such period as they shl think fit, & for that ppose to retain & employ thrin the capl [*or*, my share of the capl] wch shl at my death be employed thrin, & such addonal capl as they shl think fit to advce from time to time out of my residy este (*c*), with power to employ [*or* concur in employing], at such salary as they shl think fit, any manager of the sd business, & genlly to act [*or*, concur in actg] in all mres relatg to the sd business, as if they were beneflly entled thto, [*or*, to my share & intt thrin :] And also with power to delegate all or any of the powers vested in them in relon to the sd business to any psons or pson whom they may think fit: And my trees shl be free from all responsibility, & be fully indemnified out of my este in respt of any loss arisg in relon to the sd business.

Power to appoint one of trustees manager, &c.

(*a*) The following addition may sometimes be desirable :—" AND I further empower my trees if thought fit to appt one of themselves to be the manager of the sd business or to admit him into ptnp thrin or to sell the sd business & premes to him upon such terms in all respts as may be thought fit."

(*b*) As to the adjustment of the rights of successive tenants for life of a business in respect of profits and losses, see *Upton* v. *Brown*, 26 Ch. D. 588.

Variation for farm.

(*c*) For a farm say, " with power for that ppose to cultivate, drain, improve & manage any farms held by me at the time of my death, & to sell & dispose of the live & dead stk for the time being thron, & the crops raised on the same, & also to pchase such live & dead stk, seeds, & manures as they may think fit, & also, &c."

Power to leave capital in business on loan. A full form.

VI. I AUTHORISE my trees, if they shl in their discron think fit, to permit the whole or any pt of the amt, wch on takg the ptnp accts shl appear to be due to my este as & for my share & intt in any ptnp business in wch I may be engaged at my dece, to remain in the sd business on the footg of a loan, for such period as they may think pper, upon the terms of receivg intt for the same, eir at a fixed rate or at a rate varyg with or dependent on the profits of the business, & upon such other terms in all respts as may be deemed pper or expedient; & from time to time to renew or continue such loan wholly or partially, & to agree to any alteron or modificon of the terms thof, so that the repaymt of the sd capl, with the intt thron as agrd, shl be secd by the bond or covt of the pson or psons to whom the loan shl be made, eir with or witht any other secy for the same, as my trees shl think fit: And my sd capl or any pt thof may be so allowed to remain in the sd business, notwg that my trees for the time being, or any or eir of them, may be engaged or concerned thrin, & notwg any change from time to time in the psons carryg on the same or in the character of the business, & my trees shl not be in anywise responsible for any loss thby occasd.

Power to convert business into a company.

VII. AND I AUTHORISE my trees at any time to convert or join in convertg the sd business into a Co limd by shares in such mner as may be thought fit, & to promote or assist in promotg a Co for the ppose of takg over the sd business at the expse of my este; And I declare that my trees may sell or transfer the sd business, the ppty, assets, & capl embarked thrin, & the goodwill thof, or any pt thof, to such Co or to any Co having for its objects or one of its objects the pchase of a business of a like nature, in conson, wholly or in pt, of ordinary shares thrin wholly or partially pd up or wholly or in pt of debes, debe stk, or bonds or preferce shares of such Co, & as to the balce in cash payable immedly or by any instalmts, with or witht secy, & my trees or any of them may act as dirors, manager, or secretary of, or hold any other office in relon to such Co witht being accountable for any remuneron reced by them or him as such, & may enter into any such other arrangemts as to any such Co as afsd, or as to the sale or transfer of the sd business & the assets thof to the Co so formed or orwise whether bfe or after the incorporon of the sd Co, as my trees in their absolute discron shl think fit, & so that all contracts or arrangemts wch may be made or entd into by my trees for any of the pposes afsd shl be valid & effectual, notwg that any trees or tree may be a promoter or promoters of the Co or intd Co, or may be intted or concerned thrin or intd so to be as a shareholder, diror, manager, secretary, or in any other character or capacity: AND I HBY FURTHER DECLARE that the sale or transfer of the sd business & the assets thof to the sd Co may, if deemed necy or expedient, be effectuated by my exs in that character, in wch case they shl have all such & the like powers & authorities in relon thto as are hinbfe given to my trees: AND I DECLARE that all shares, bonds, debes, debe stk, & moys wch may be reced as the conson for the sale & transfer of the sd business, & the assets thof, or any pt thof, to such Co as afsd shl be vested in & held by my trees upon the trusts hinbfe decld of & concerng my residy este & the investmts & premes representg the same.

Power or direction to executors to exercise option of becoming sleeping partners.

VIII. I AUTHORISE my exs to exercise at their discron [I DIRECT my exs to exercise] the option given to them by the articles dated, &c., wch now regulate my ptnp in the firm of ——, or any option wch may be available in that behalf at my dece, of becomg sleepg ptners in such firm: And I declare that [in case my exs shl elect to become such sleepg ptners] my share from time to time in the capl of the sd firm shl be considered as formg pt of the capl of my residy este, & that my share from time to time in the profits thof & intt on capl, as from the last day immedly precedg my death appted by the sd articles of ptnp for takg the annl genl acct of the sd ptnp business, shl be considered & applied as income of my residy este.

Power to executors to make arrangements for admission of testator's son into his business.

IX. I AUTHORISE my exs [& trees] to make any arrangemts with the ptners or ptner for the time being of the firm of ——, in wch I am now a ptner, for the admission into the sd firm of any son or sons of mine as a ptner or ptners, for the whole or any part of my share in the sd business; And on the admission of such son or sons eir to sell to him or them my share in the sd business on such terms as may be reasble or to allot such share to him or them in satisfon, wholly or in pt, of his or their share or shares in my residy este; & to leave the whole or any pt of the pchase-moy to be pd by any such son as a loan to him, repayable with intt at the rate of 5 p.c. p.a. by such instalmts, at such times, & in such mner as may be agrd upon, but so that the repaymt of such instalmts & intt shl be secd by the bond or covt of such son.

Sons to have option in succession of succeeding to testator's business, or to a share in a partnership.

X. I DECLARE that my sons shl have the option in succon accdg to seniority, [on attaing the age of —— yrs,] of succeedg to my [share in the] business [of the firm] of ——, [in wch I am now a ptner,] such option to be decld in writg by each son within such time as my exs shl appt in that behalf, by a notice given to such respive sons in succon; And I declare that immedly on any son of mine electg to succeed to such business, [share, my exs shl make all necy arrangemts for introducg him into the sd firm for the whole of my share thrin: And I declare that from & after the admission of such son into the sd firm] the whole of [my share in] the sd business & the capl thof shl belong to him, & he shl be debited with the value thof, (estimated in such mner as my exs shl think fit) in the divon of my este, & in case such value shl exceed the total amt of the share of such son in my este, he shl refund such excess to my este by instalmts or orwise, in such mner as my exs shl determine: Provd always that the profits of the sd business until any son of mine shl elect to succeed thto [share of profits comg to my este until the admission of such son] shl be treated as income of my residuary este.

Power to executors to reserve right of introducing testator's son or sons on attaining 21 into business (*a*).

XI. I AUTHORIZE my exs [& trees] in their absolute discron to make any arrangemts wch may be feasible, & wch they may think fit, for securg the introdon of any son or sons of mine, when & as he or they shl resply attn the age of 21 yrs, or within a reasble time aftwds, as a ptner or ptners into the sd business, [firm, for pt of the share of my son or sons who shl be admitted under such arrangemt as afsd, *see forms* IX. & X.] upon such terms as may be agrd upon.

(*a*) This form may be added to form IX. or X.

GENERAL LEGACIES.

Pecuniary legacy.

I. I BEQUE to A., of, &c., the sum of £—— [to be increased in the event of, &c., to £——, & to be free of death duties].

The same. Several.

II. I BEQUE the follg legacies [all free of death duties,] namely, to A., of, &c., the sum of £——, to B., of, &c., the sum of £——, & to C., of, &c., the sum of £——.

The same to a female for separate use (*a*).

III. I BEQUE to —— the sum of £—— for her septe use.

Demonstrative legacy.

IV. I BEQUE to A., of, &c., the sum of £——, to be raised by the sale of a sufft pt of the 2¾ p.c. Consold Stk now standg in my name, as the primary fund for the paymt thof, & in case I shl not be possed of such stk or a sufft amt thof at my dece, I direct that the sd legacy, or so much thof as the sd stk shl be insufft to pay, shl be pd out of my genl psonal este.

Legacy in trust.

V. I BEQUE to, *trees,* the sum of £——, upon the trusts hinafter decld concerng the same.

Stock legacy in trust.

VI. I BEQUE to, *trees,* the sum of £——, 2¾ p.c. Consold Stk, to be appropriated or pchased in their names, out of my genl psonal este, & to be held upon the trusts hinafter decld concerng the same.

The same. Another form.

VII. I BEQUE to, *trees,* the sum of £——, &c., stk., as a genl & not as a specific legacy, to be held upon the trusts, &c.

Immediate legacy to wife (*b*).

VIII. I BEQUE to my wife C. the sum of £——, to be pd to her within *one* calr month [*or,* as soon as may be] after my dece for her immediate requiremts & in priority to all other beqts hby made.

(*a*) As to the insertion of the words "for her septe use," see *ante*, p. 466, note (*b*).

As to legacy to testator's wife.

(*b*) As to interest on a legacy to the testator's wife, where there was a doubt whether they were legally married, see *Re Percy*, 24 Ch. D. 616. As to interest on a legacy to the testator's wife in lieu of dower and freebench, where a case of election arises, see *Re Bignold*, 45 Ch. D. 496. That the testator's wife is not entitled to priority in respect of a legacy given in satisfaction of dower, in the event of the personal estate being insufficient, where the testator has by his will disposed of all his real estate, see *Re Greenwood*, [1892] 2 Ch. 295. And where the personal estate is insufficient, a legacy to the wife is liable to abatement though given for her immediate requirements and directed to be paid within a short time after the testator's death: *Blower* v. *Morret*, 2 Ves. Sen. 420; *Re Schweder*, [1891] 3 Ch. 44. Priority should, therefore, be expressly given to such a legacy as in the above form.

As to a will in favour of a reputed wife (to whom the testator was not legally married), see *infra*, p. 850, note.

Legacy to a person or to his children by substitution (*c*).

IX. I BEQUE to A. of, &c., the sum of £——; but in case he shl die in my lifetime, then I beque the same to his chln or child (if any), who shl be livg at my dece, & shl attn the age of 21 yrs, or being daurs or a daur, shl marry, if more than one in eql shares.

The same. Several.

X. I BEQUE the follg legacies, namely, to A. of, &c., the sum of £——, to B. of, &c., the sum of £——, & to C. of, &c., the sum of £——; but in case any of the sd legatees shl die in my lifetime, then I beque his or her legacy to his or her child or chln (if any), who shl, &c., *as in precedg form.*

Legacy with provision against lapse in case of legatee dying leaving issue.

XI. I BEQUE the sum of £—— to A. of, &c., & if he shl die in my lifetime leavg issue survivg me, I declare that such legacy shl not lapse but shl vest in his repves as pt of his psonal este in the same mner as if he had survived me & died immedly after me (*d*).

The same to several

XII. I BEQUE the follg legacies, namely, to A. of, &c., the sum of £——, to B. of, &c., the sum of £——, & to C. of, &c., the sum of £——, & I declare that in case any of such legatees shl die in my lifetime leavg issue survivg me, the legacy hinbfe bequed to him or her shl not lapse but shl vest, &c., *as in last form.*

Legacy to vest at 21.

XIII. I BEQUE the sum of £—— to A. of, &c., in case & when he shl attn the age of 21 yrs.

The same to a female at 21 or marriage.

XIV. I BEQUE the sum of £—— to A. of, &c., in case & when she shl attn the age of 21 yrs, or marry under that age, & so that in case of marre the same shl be for her septe use, & her rect for the same shl, notwg her minority, be a sufft dischge (*e*).

(*c*) Compare form XI.

As to provision against lapse.

(*d*) A legacy saved from lapse in this way would devolve, as part of the legatee's estate, in the same manner as a legacy to a descendant of the testator saved from lapse by the Wills Act, s. 33. But it is not liable to duty as passing from him, *Lord Advocate* v. *Bogie*, [1894] A. C. 83. It must be remembered that where the legatee is not a descendant of the testator, a mere declaration against lapse is not enough, but must be supplemented by an express gift to the representatives as above; see *Re Coleman*, 4 Ch. D. 165. The legacy in this case would pass under the will, if any, of the legatee, or otherwise go to his next of kin, and would be subject to his debts, which would sometimes be a reason for giving it to the children in substitution, as in form IX.

(*e*) Probably, though it is not certain, an infant can give a receipt for money paid to him in pursuance of an instrument which provides that his receipt shall be a discharge. *Re Deneker*, [1895] W. N. 28; 13 Rep. 294; *Re Cardross*, 7 Ch. D. 728; *Re D'Angibau*, 15 Ch. D. 228. In consequence of this

Legacy to female with a restraint on anticipation during coverture (*a*).

XV. I BEQUE the sum of £—— to B. [the wife of C.], of, &c., for her septe use; PROVD ALWAYS & I declare that in case the sd B. shl at the time of my dece be or shl aftwds & bfe paymt of the sd legacy become under coverture the same shl not be pd to her, but shl be pd to my trees, & retained by them durg her coverture, & invested by them for the benefit & with the consent of the sd B, in any investmts hby authorized in the case of my residuary este, with power with her consent to vary such investmts, & that the sd B. shl not have power durg coverture to dispose of or chge the sd legacy or the future income thof by way of anticipon.

Legacies with interest to 2 persons at 21 with survivorship.

XVI. I BEQUE to A. & B., the sons of ——, the sum of £—— each, to be pd to them resply if & when they shl resply attn the age of 21 yrs, with intt at the rate of —— p.c. p.a. from my dece; & in case eir of them shl die in my lifetime, or bfe he shl attn that age, I beque the legacy hinbfe given to him so dying, with intt as afsd, to the survor of them if & when he shl attn the age of 21 yrs; & in case both of them shl die in my lifetime, or bfe attng that age, the sd legacies shl sink into my residuary este & not be payable (*b*).

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doubt it will sometimes be convenient to authorise payment to the infant's parent or guardian. See post, p. 712, form XIX.

Restraint on anticipation.

(*a*) As to restraining anticipation in case of an absolute legacy, see *Re Ellis*, L. R. 17 Eq. 409; *Re Clarke*, 21 Ch. D. 748 (questioned in *Re Bown*, 27 Ch. D. 411); *Re Spencer*, 30 Ch. D. 183; *Re Grey*, 34 Ch. D. 85, 712; *Re Tippett's and Newbould's Contract*, 37 Ch. D. 444. As to the effect of the rule against perpetuities on a restraint on anticipation, see *Re Ridley*, 11 Ch. D. 645; *Herbert* v. *Webster*, 15 Ch. D. 610; *Cooper* v. *Laroche*, 17 Ch. D. 368; and as to the effect of the M. W. P. A., 1882, see p. 466, note. A gift by will to a husband and wife and a third person would, at any rate before the M. W. P. A., 1882 (under the doctrine as to tenancy by entireties), confer one moiety upon the husband and wife, and the other moiety upon the third person (*Re March*, 27 Ch. D. 166); unless a contrary intention is shown, of which a very slight indication would suffice (*Dias* v. *De Livera*, 5 App. Cas. 135; *Re Dixon*, 42 Ch. D. 306). It would appear from *Re Jupp*, 39 Ch. D. 148, that the Act has not altered this rule further than to give the moiety of the husband and wife in equal shares between them, the share of the wife being for her separate use according to the Act, but in *Re Dixon*, *ubi supra*, North, J., seems to have inclined to a different view. In such a gift the intention should of course be expressed so as to be free from doubt. As to the effect since the Act of a gift to husband and wife as joint tenants, see *Thornley* v. *Thornley*, [1893] 2 Ch. 229.

Gift to husband and wife, and a third person.

As to contingent legacies.

(*b*) A gift to a person at twenty-one, or if he shall attain twenty-one, without more, is a contingent gift (Hawkins on Wills, p. 223); but, by an artificial rule of construction, if the whole interim interest is given to the legatee, or to some

Legacy to child at 21, with interim maintenance.

XVII. I BEQUE the sum of £—— to my son —— if he shl attn the age of 21 yrs, with intt (*c*) in the meantime at the rate of 4 p.c. p.a., to be computed from my dece, & to be pd to his gdians or gdian for his mtce & educon; & if the sd —— shl die under the age of 21 yrs, then the sd legacy shl sink into my residuary este & not be payable (*d*).

Legacy to class of children at 21, with interim maintenance (*e*).

XVIII. I BEQUE the sum of £—— unto & eqlly betn such of my chln, as being sons attn the age of 21 yrs, or being daurs attn that age or marry; & I direct that such legacy shl carry intt in the meantime at the rate of 4 p.c. p.a. from my dece, to be applied by my trees at discron in or towards their respive mtce & educon, with power eir themselves so to apply the same,

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other person to be applied for his benefit, the legacy vests at the testator's death (*Hanson* v. *Graham*, 6 Ves. 239; Hawkins, p. 227). Hence the necessity for the direction as to the legacy sinking into the residue.

Interest on legacies and maintenance.

(*c*) A legacy which is contingent on the legatee attaining twenty-one, or any other event, does not in general carry interest pending the contingency, even though it has been severed from the general estate, unless the severance has been necessitated by something connected with the legacy itself (*Re Judkin*, 25 Ch. D. 743; *Re Inman*, [1893] 3 Ch. 518); but a gift to a child of the testator, or other person to whom he stands *in loco parentis*, would, unless a contrary intention is shown, carry interest for maintenance during minority. If in that case maintenance is not intended, it should be expressly excluded by adding, "but without interest in the meantime." As to interest on legacies and residue, see 35 Sol. J. 150; 37 *ib.*, 263, 281.

A direction for payment of interest at 4 per cent. may delay distribution as the trustees may be unable to obtain that rate of interest on a fund appropriated to meet the legacy. To avoid this difficulty the rate of interest given may be 3 per cent., or it may be declared that after appropriation the income of the appropriated fund is to be taken in satisfaction of the interest.

Maintenance clause in C. A., 1881.

By the C. A., 1881, s. 43, provision is made for the maintenance of an infant out of the income of any property, "held by trustees in trust for" the infant, whether absolutely or contingently; but if the legacy is contingent on the infant attaining twenty-one and interest is not given in the meantime, expressly or by implication, the Act does not apply, as there is nothing upon which it can operate (see above, p. 477, note). Where the legacy is not given to trustees in trust for the infant, but to the infant direct, and is vested, the executors on assenting to the bequest become trustees for the infant within the meaning of the Act, and equally so if the gift is residuary (see *Re Smith*, 42 Ch. D. 302); and it seems clear that this would be the case where there is a gift to the infant direct contingent on attaining twenty-one, with intermediate interest. It would be well, however, in such a case, to make express provision for maintenance, &c., if so intended; see forms XVIII. and XX.

(*d*) See note (*c*), p. 710.

Gift to a class at 21, &c.

(*e*) A gift to such children as attain twenty-one as a class, with interim maintenance, vests only in those who actually attain twenty-one, and not in the children living at the testator's death, as it would if the gift had been *nominatim*; Hawkins on Wills, p. 228.

or to pay the same to the gdians or gdian of such respive chln witht seeing to the applicon thof.

Power to pay infant's legacies to parent or guardian (*a*).

XIX. I DECLARE that in every case in wch any legatee under this my will or any codl hto shl be under the age of 21 yrs, & in the case of a female unmarried, his or her legacy may be pd by my exs or trees at their option & in their absolute discron, to the parent or gdian or gdians of such legatee, whose rect shl be a complete dischge for the same & exonerate them from all further concern or responsibility in relon thto.

General direction as to investment, &c., of infants' legacies.

XX. AND IN CASE any of the legatees to whom legacies are hinbfe bequed shl at the time when his or her legacy wd orwise become payable be a minor & in the case of a female unmarried, I direct that his or her legacy shl be invested by my trees in any investmts hby authorized in the case of my residuary este, with power to vary such investmts at discron, & that the whole or any pt of the income [or capl] thof shl durg the minority, & in the case of a female, spinsterhood, of such legatee, be applied by my trees at their discron for or towards the mtce, educon, [advcemt], or benefit of such legatee, eir directly, or by paying the same to his or her parent or gdians or gdian, witht seeing to the applicon thof, & that any surplus income shl be accumulated by the investmt thof, & of the resultg income thof, as an addon to the capl of such legacy, but with power to my trees to apply any such accumulons in any subseqt yr or yrs for the mtce, educon, [advcemt] or benefit of the legatee; *if the legacies are contingent, add:* "Provd always that in case any of the sd legatees shl die bfe attng a vested intt in his or her legacy, the same & any accumulons thof, or so much thof as shl not have been applied or disposed of as afsd, shl sink into my residuary este."

Legacy to god-children.

XXI. I BEQUE the sum of £—— to each of my god-chln, & I declare that in case any doubt shl arise as to who are the objects of this beqt, my exs shl be at liberty to act upon such evidce as they shl think fit, & their determinon shl be conclu-

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As to infants' legacies.

(*a*) The provision in the Legacy Duty Act (36 Geo. III. c. 52), s. 32, by which executors were empowered to pay the legacies of infants into Court, has been repealed by the T. A. 1893, and other provisions substituted; see s. 42 and the rules of Court thereunder; an executor being a trustee within the Act, see s. 50. An infant's legacy can now be invested by the executors in any manner authorized for trust money by the T. A. 1893, s. 1.

sive, & that any god-child who shl not claim his or her legacy within one yr from my dece shl not be entld thto.

Legacies to executors and trustees (*b*).

XXII. I BEQUE to each of them the sd A. & B. [to each of my exs [& trees] other than the sd A.], in case they shl resply prove my will [& accept the trusteeship thof], *or*, "as a small acknmt for their trouble in the exorship [& treeship] of this my will," the sum of £——.

Power to trustees to charge fees (*c*).

XXIII. I REQT my trees for the time being to hold a meetg once in every half-yr to examine & adjust the accts of my este, & I authorize each of them to retain & pay himself the sum of £—— for the trouble & expse of attendg each of such meetgs.

Legacy to a servant (*d*).

XXIV. I BEQUE to my servant A. the sum of £—— [free of duty,] in addon to any monies owing to him by me at my death [in recognon of, *or* "as an acknmt for," his long & faithful services to me & my family, *or*, "provd he shl be in my service at the time of my dece"].

Legacies to servants or clerks.

XXV. I BEQUE to each of my domestic [indoor & outdoor] servants [clerks], who shl be in my service [employed in my business] at the time of my dece [shl have been in my service for —— yrs prior to my dece (*e*)] & shl not be under notice to leave, whether given or reced, the sum of £—— [the amt of one yr's wages, *or*, salary], [free of duty], in addon to any monies owing to them resply by me at my death.

The like according to length of service.

XXVI. I BEQUE to each of the follg servants of mine who shl be in my service at my death, & shl not then be under notice to leave, whether given or reced, the follg legacies [free of duty], namely, to my butler £—— for every complete yr that he shl have been in my service, to my coachman £—— for every complete yr of his service, &c., in addon, &c., *as in form* XXV.

Legacies to servants at discretion of executors.

XXVII. I BEQUE to my exs the sum of £—— [free of duty], to be divided among, or applied for the benefit of, such of my indoor & outdoor servants who shl be livg with me at the time

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(*b*) It is a presumption which is rebuttable that a legacy given to a person appointed executor, whether preceding or following the appointment, is annexed to the office, see *Re Appleton*, 29 Ch. D. 893.

(*c*) The sums received by the trustees under such a clause are liable to legacy duty: *Re Thorley*, [1891] 2 Ch. 613.

(*d*) As to legacies to servants, see 4 Dav. Prec., p. 75, note; 1 Jarm. on Wills, p. 305.

(*e*) As to these words see *Re Sharland*, [1896] 1 Ch. 517.

of my dece, in such proportions & mner as my exs shl in their absolute discron think fit, in addon, &c., *as in form* XXV.

Legacy to a charity (*a*).

XXVIII. I BEQUE to the —— Instititon [situate at ——] the sum of £—— [free of duty], to be applicable for the genl

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As to legacies to charities.

(*a*) The statute law contained in 9 Geo. 2, c. 36, and other Acts relating to gifts *inter vivos* and by will for charitable purposes was consolidated, with some amendments, by the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42); but the law has now, as regards gifts by will, been very materially altered by the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), which came into operation on the 5th August, 1891, and which (by ss. 3, 4, and 5) has altogether done away with the statutory prohibition of testamentary gifts of land and money secured on land or other personal estate connected with or savouring of realty to charitable uses; but by s. 5 any land (which by s. 3 includes hereditaments corporeal or incorporeal of any tenure) so given is to be sold within one year from the testator's death, or such extended time as may be allowed by the Court or the Charity Commissioners; unless the retention is sanctioned by the Court or Charity Commissioners as being required for actual occupation for the purposes of the charity and not as an investment (s. 8); and if not so sold, is by s. 6 to vest in the official trustee of charity lands and to be sold under the direction of the Commissioners. (See also the Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29), s. 10, excepting land given by will for the purposes of that Act from the requirement as to sale.) It is also provided (by s. 7 of the Act of 1891) that where personal estate is by will directed to be laid out in the purchase of land for any charitable use, it is to be held as though there had been no such direction, subject to the like exception (s. 8), where the land is required for actual occupation. S. 7 does not seem to affect a mere power to invest in land. The Act of 1891 renders unnecessary the provisions formerly inserted directing charitable legacies to be paid out of the pure personalty, and (in the case of residuary gifts) for marshalling the assets so as to leave as much pure personalty as possible to pass under the gift. The effect of the late Act may enlarge the scope of an existing will containing a residuary gift to charity of all such parts of the testator's estate as may lawfully be so given; see *Re Bridger*, [1894] 1 Ch. 297. A gift to A. for life with remainder to a charity is valid: see *Re Hume*, [1895] 1 Ch. 422.

As to selection of charities by executors.

Church.

A gift of lands or tenements not exceeding five acres, or a bequest of money not exceeding £500, on trust to apply the income in "erectg, re-buildg, pchasg, or provdg" a church, residence for the incumbent, churchyard or glebe is charitable, but is excepted from the Mortmain Acts, 43 Geo. 3, c. 108 (see the Act of 1888, s. 8); but a gift for the repair of a tomb not forming part of the fabric of a church is not charitable; *Re Vaughan*, 33 Ch. D. 187, where the cases are collected, but it is possible to practically ensure that the tomb shall be kept in repair in perpetuity by making a gift to a charity with a gift over to another charity on the tomb falling out of repair; *Re Tyler*, [1891] 3 Ch. 253.

Repairs of tomb.

Cy-près.

As to whether a legacy for a charitable object which has failed, lapses, or is applicable *cy-près*, see *Re White*, 33 Ch. D. 449; *Re Rymer*, [1895] 1 Ch. 19; see also *Re Slevin*, [1891] 2 Ch. 236, in which case the charity was discontinued after the death of the testator but before the legacy was paid; and as to the rule that where a general charitable intention is shown, though there is a failure of the particular object, a scheme *cy-près* will be directed, see *Biscoe* v.

pposes of such institon ; & I declare that the rect of the treasurer or other pper officer for the time being of such institon shl be a sufft dischge for the same.

Several charitable legacies.

XXIX. I BEQUE the follg charitable legacies [free of duty], that is to say, to the —— Socy the sum of £——, to the —— Institon the sum of £——, &c., & I declare that the rect of the treasurer or other pper officer for the time being of the same respive societies & institons shl be a sufft dischge for the same respive legacies.

Legacies to charities to be selected by executors.

XXX. I BEQUE the sum of £—— [free of duty], unto or for such charitable institon or institons or other charitable object or objects (*b*) in England as my actg exs or exor may in their or his absolute discron select, & to be pd to or for such institons or objects, if more than one, in such proportions as my sd exs or exor may think pper.

Legacy to the governors of Queen Anne's Bounty.

XXXI. I BEQUE to the Governors of the Bounty of Queen Anne for the augmenton & mtce of the poor clergy the sum of £—— free of death duties, to be by them applied & disposed of for the augmenton of the Vicarage of ——, in the county of ——.

Legacy for the benefit of the poor.

XXXII. I BEQUE to the Rector for the time being of the parish of ——, in the county of ——, the sum of £—— free of death duties, to be by him distributed at his discron among such of the poor of the sd parish as he shl select.

Legacy to wife for charitable purposes to save duty.

XXXIII. I GIVE the sum of £—— to my wife —— absolutely, provd that (but nevs withŧ imposg upon her any legal or equitable obligon, condon, trust, or election whatsr, or interferg with her full & absolute rt of ppty in that sum) I declare it to be my wish that as soon after my death as may be she

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Jackson, 35 Ch. D. 460. The rule against perpetuities applies to an immediate gift to private individuals followed by an executory gift in a certain event to a charity, and to the converse case, see *Re Bowen*, [1893] 2 Ch. 491, but not a gift to a charity with a gift over to another charity in a certain event ; *Christ's Hospital* v. *Grainger*, 1 M. & G. 460.

Apportionment.

(*b*) A gift for charitable purposes, and other indefinite purposes not charitable, is void if there is no apportionment of the gift in the will ; Jarman on Wills, 173 *et seq.*, *Re Macduff*, [1896] 2 Ch. 451, but where the gift is for charitable and other *ascertained* non-charitable objects, the gift can be apportioned by the Court, and if there is a power of selection, it can be exercised in favour of the charitable objects, see *Re Ovey*, 31 Ch. D. 113 ; *Re Douglas*, 35 Ch. D. 472 ; *Re Piercy*, [1898] 1 Ch. 565. It should be made clear whether the power of selection is personal to the persons named as executors so as to be independent of their acting, or is annexed to the office, as in the above form, see *Crawford* v. *Forshaw*, 43 Ch. D. 643.

shl in so far as she thinks pper pay & apply the same for the benefit of the charitable objects next hinafter mentd in the mner & to the extent thrin mentd: And in case my sd wife shl predece me, then I beque, &c., *charitable legacies.*

Legacy to creditor (*a*).

XXXIV. I BEQUE the sum of £—— to —— in addon to any moys wch may be owing to him from me at the time of my death.

Direction that legacies are not to be in satisfaction of debts (*a*).

XXXV. I DECLARE that any legacy hby bequed to any pson to whom I may be indebted, or to the husbd or wife of any such pson, shl be in addon to, & not in satisfon of, the moys wch may be so owing by me to him or her, or to his or her wife or husbd.

Legacy to illegitimate child (*b*).

XXXVI. I BEQUE to A., now residg with —— [the natural, *or,* "reputed," son of ——] the sum of £——.

Legacy in satisfaction of covenant in daughter's settlement.

XXXVII. I BEQUE the sum of £——, with intt at the rate of 4 p.c. p.a. from the day of my death to the trees or tree of an indre of settlemt dated, &c., exted on the marre of my daur ——, in satisfon of a covt entd into by me in such settlemt for paymt of such ppal sum & intt to such trees or tree.

Legacy on trusts of daughter's settlement.

XXXVIII. I BEQUE the sum of £—— to the psons or pson who shl at my dece be the trees or tree of an indre of settlemt dated, &c., & made, &c., in contemplon of the marre of my daur ——, to be held upon the trusts & subjt to the powers & provons by & in such settlemt decld & contd concerng the moys to arise from a sale under the trusts thrin contd of the sum of £—— 2¾ p.c. Consold Stk thby settled, *or,* "concerng the ppty thby settled or agrd to be settled by or on the pt of my sd daur," *or,* "concerng the after-acquired ppty of my sd daur thby agrd to be settled," *or as the case may be,* or such of the same trusts, powers & provons as may be then subsistg, & so that such trusts, powers, & provons shl take effect in relon to the sd sum of £—— in the same mner in all respts, as far as the case will admt, as if such sum had formed pt of the moys to arise from such sale, *or,* "of the ppty origlly settled or agrd to be settled by or on the pt of my sd daur," *or,* "of

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(*a*) The presumption is that a legacy to a creditor of an amount equal or greater than the debt is to satisfy it. But this presumption may be rebutted, as, for instance, by a direction in the will that debts are to be paid, or by a direction that the legacy is to be paid *in futuro.* See notes to *Ex parte Pye*, 2 W. & T. Lead. Cas. Eq.; *Re Fletcher*, 38 Ch. D. 373; *Re Huish*, 43 Ch. D. 260; *Re Horlock*, [1895] 1 Ch. 516.

(*b*) All that is necessary in this case is, that the legatee should be sufficiently identified; see 2 Jarman on Wills, ch. XXXI.

such after-acquired ppty of my sd daur," [save & except, &c., *insert any modificons in the trusts*].

XXXIX. PROVD ALWAYS & I authorize my trees at any time with the consent in writg of my sd daur A. & the sd B. her husbd, or the survor of them, & after the dece of such survor at the absolute discron of my trees, to transfer & make over the trust premes representg the sd legacy of £—— hinbfe bequed in trust for my sd daur & her husbd & issue, or orwise as afsd, to the trees or tree for the time being of the settlemt made in contemplon of the marre of my sd daur, dated, &c., & made, &c., to be held by the trees or tree of the sd settlemt, upon the trusts & subjt to the powers & provons by & in this my will decld & contd concerng the same legacy & the trust premes representg the same: AND I DECLARE that the rect of the trees or tree for the time being of such settlemt for any moys, stks, funds, or secs, or other the trust premes, pd, transferred, or made over to them or him as afsd, shl be an effectual dischge to my trees for the same, & exonerate them from all further responsibility in relon thto: PROVD ALWAYS & I DECLARE that in the event of the same trust legacy being transferred to the trees or tree of the sd settlemt as afsd, the power of apptg new trees thof shl thenceforth be vested in the psons or pson in whom the power of apptg new trees of the sd settlemt is vested.

Power to transfer trust legacy of daughter to trustees of her settlement.

XL. I BEQUE to A., the wife of B., of &c., the sum of £——, to be pd at the expiron of —— calr months from my death, if she shl be then living (but not orwise), & the further sum of £——, to be pd at the expiron of —— calr months from my death, if she shl be then living (but not orwise), & the further sum of £——, &c., such respive sums to be for her septe use.

Bequest to married woman not to fall into settlement (c).

XLI. I BEQUE to A., the wife of B., of, &c., the sum of £——, & I declare that the same shl not be affected by or subjt to the trusts declared by the settlemt exted on her marre, concerng her after-acquired ppty.

Legacy not to be subject to trusts of wife's after-acquired property (d).

As to legacy avoiding after-acquired property clause.

(c) The object of this is to prevent the legacy from becoming subject to the legatee's marriage settlement under the after-acquired property clause, the legacy being cut up into instalments, each below the minimum amount fixed by that clause, and each being made contingent so as not to accrue at the same time.

(d) This clause will be ineffectual unless the covenant as to after-acquired property contains the provision at the top of p. 507.

Legacy to be repaid on succeeding to a title.

XLII. I BEQUE the sum of £—— to ——, upon condon that if he shl (*a*) succeed to the earldom of ——, *or,* "to the baronetcy now vested in ——," he shl repay the same to my exs, to the intent that the same shl fall into my residuary este.

General direction that legacies are to be free of duty (*b*).

XLIII. I DECLARE that all the pecuniary legacies hinbfe bequed shl be free from duty, wch (whether psntly, or psumptively, or prospectively payable) shl be pd out of my genl psonal este, [*or if the legacies are given out of a parlar fund,* " out of the sd," *fund*].

Direction to pay legacies in three months.

XLIV. I DIRECT that the legacies hinbfe bequed to the sd A. & B. shl be pd within three calr months after my dece, but witht intt.

Declaration as to priority of legacies.

XLV. I DECLARE that the legacy of £—— hinbfe bequed to the sd—— shl be payable in priority to any other pecuniary legacy bequed by this my will [or any codl hto].

The same. Another form.

XLVI. I DIRECT that the sevl pecuniary legacies hinbfe bequed to the sd, &c., shl have priority in the order in wch the same are hinbfe bequed, but so that legacies given to a class shl have no priority as betn the members of such class.

Direction that certain legacies shall abate in case of deficiency.

XLVII. PROVD ALWAYS, & I DECLARE that if the moys to arise from the sale & conversion hby directed or orwise formg pt of my este shl not be sufft to pay my funl & testy expses & debts, & all the legacies hby bequed, then the legacies of £—— & £—— hby given to the sd —— & —— shl abate proportionately.

Direction for payment of interest on trust legacy or legacies, until raised.

XLVIII. AND I DECLARE that until the sd legacy of £—— hinbfe bequed in trust for the sd —— & his chln, *or,* "the respive legacies hinbfe bequed," shl be pd or raised & set apt or appropriated, intt thron [resply] at the rate of 4 p.c. p.a. to be computed from [the expiron of one yr after] my dece shl be

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Conditions as to legacies.

(*a*) Other forms of conditions are, "if he shl become a field officer in her Majesty's army"; "if he shl be instituted to an ecclesiastical benefice, the net annl value of wch shl exceed the sum of £——": "if he shl not bfe or within —— yrs from my dece take the degree of Bachelor of Arts at the University of ——." See also p. 476. See *Brownlow* v. *Egerton*, 4 H. L. C. 1, as to validity of conditions of this nature.

As to duty on legacies.

(*b*) As to duty presumptively or prospectively payable, see the Customs, &c., Act, 1880 (43 Vict. c. 14), s. 11, and the Customs, &c., Act, 1881 (44 Vict. c. 12), s. 43.

pd out of my residuary este & shl be applicable as income of the sd legacy [respive legacies].

XLIX. PROVD ALWAYS, & I hby declare that it shl not be incumbent on my exs or trees to raise any legacy hinbfe bequed in trust, or to set apart funds to provide for the same, until the capl of such legacy or some pt thof shl become payable, *or*, "until the same in the judgmt of my exs or trees can conveniently & with a due regard to the intts of all pties concerned be raised," but until the raisg thof intt thron resply, &c., *as in last form.*

Power to postpone raising of trust legacies.

L. I BEQUE the follg legacies chged exclusively (*c*) upon, & raisable & payable out of the hds situate &c., hinafter devised to —— (that is to say), the sum of £—— to ——, &c.

Gift of legacies charged on specific real estate.

LI. I HBY CHGE all the legacies hinbfe bequed on my real este, [situate, &c., hinafter devised to ——] in case of the deficiency of my psonal este (*d*), with power for my exs, *or*, "trees," to raise the amt of such deficiency, togr with the costs of raisg the same, by sale or mtge of such real este, or any pt or pts thof, & so that any such mtge may be in fee simple, or for any term of yrs [or by way of registered chge], and with or witht a power of sale, & to exte & do such assurces & things as may be necy or pper for effectuatg any such sale or mtge: & I declare that no pchaser or mtgee shl be bound to ascertain whether such deficiency of my psonal este exists, or whether more moy than is required is raised, or to see to the applicon of the moy raised, & that the declon in writg of my exs, *or*, "trees," that no further sum can be required to be raised under the psnt power shl be conclusive in favour of any pchaser, mtgee, lessee, or other pson acquirg any intt in the sd real este, or any pt thof.

Charge of legacies on real estate with directions for raising them.

LII. I DECLARE that if any real or psonal ppty hereby specifically given to any person or persons shall be sold in my lifetime I give to such person or persons a legacy equal in amount to the net sale moys of such ppty after providg for the costs of sale thof and the dischge of incumbrances thon.

Proviso as to sale of property specifically given.

(*c*) Such an exclusive charge, or a power of appropriation vested in the executors or trustees, is sometimes desirable to exclude the legatee from a right to take proceedings for general administration by the Court.

(*d*) As to the effect of this as regards duty, see *infra*, p. 734, note (*a*).

BEQUESTS OF ANNUITIES.

Bequest of annuity.

I. I BEQUE to A., of, &c., durg his life, an anny of £—— [free from death duties (*a*)], commencg from my death to be payable by eql half-yrly, *or,* "qtrly" (*b*) paymts, & the first paymt thof, to be made at the expiron of six, *or,* "three" calr months from my death.

Several annuities.

II. I BEQUE the follg annies [free of duty], that is to say, to A. of, &c., an anny of £—— durg his life, to B, of, &c., an anny of £—— durg his life, &c., such respive annies to commce from my death & to be payable, &c., *as in form* I.

To woman for separate use without anticipation (*c*).

III. I BEQUE to A., the wife of B. of, &c., durg her life, an anny of £—— [free of duty] for her septe use witht power of anticipon, to commce from my death, & to be payable, &c., *as in form* I.

General declaration that annuities to females shall be for separate use, &c.

IV. I DECLARE that all annies hinbfe bequed to females shl durg coverture be for their respive septe use witht power of anticipon.

Gift of annuity to wife for life or widowhood (*d*).

V. I BEQUE to my wife A. durg her life [widowhood] an anny of £—— to commce from my death, & to be payable, &c., *as in form* I. [& so that in the event of her marrying again the same shl be for her septe use witht power of anticipon].

The same reducible on second marriage.

VI. I BEQUE to my wife A. an anny of £—— durg her widowhood commencg from my death, & in the event of her marrying again then durg the remr of her life a reduced anny of £—— for her septe use witht power of anticipon, such respive annies to be payable by eql half-yrly, *or,* "qtrly" paymts.

As to giving annuity free of deductions.

(*a*) Although a direction in a deed that an annuity is to be paid free from income-tax is void, such a direction contained in a will is valid, *Re Bannerman*, 21 Ch. D. 105; if this is intended, add, "& from income tax, wch shl be pd out of my residuary este."

It is unnecessary to provide for the apportionment of the annuity at the death of the annuitant; see the Apportionment Act, 1870 (33 & 34 Vict. c. 35).

(*b*) As the dividends on the 2¾ per cent. consols are payable quarterly, annuities may usually conveniently be made so payable.

(*c*) As to gifts to married women and the effect of the M. W. P. A., 1882, see p. 466, note.

(*d*) Where an annuity is given to testator's wife in satisfaction of dower, it has no priority where the personal estate is insufficient for payment of all the legacies in full, see *Re Greenwood*, [1892] 2 Ch. 295.

Bequest of annuity to two persons and survivor (*e*).

VII. I BEQUE to A. of, &c., & B., of, &c., & the survor of them, an anny of £——durg their jt lives & the life of the survor [free from duty], commencg from my death & to be payable, &c., *as in form* I.

Annuity during spinsterhood (*f*).

VIII. I BEQUE to A. of, &c., if she shl be a spinster at my death an anny of £—— to commce from my death & to be payable so long as she shl remain a spinster by eql half-yrly paymts, the first of such paymts to be made at the expiron of six calr months from my death if the sd A. shl be then living & a spinster.

Proviso for cesser of annuity on alienation.

Variation where it is to be afterwards applied at discretion of trustees for the benefit of the annuitant and his family.

IX. PROVD ALWAYS & I declare that (*g*) if any act or event shl happen in my lifetime or after my death, whby the anny hby given to the sd A. or any pt thof, wd, if belongg absolutely to him become vested in or chged in favour of some other pson or psons or a corporon, then such anny shl cease as if he were dead, [*or*, shl cease to be payable to him, & shl thenceforth durg the remr of his life be payable to my trees, upon trust that my trees shl thrafter, durg such period or periods eir continuous or discontinuous, as they shl in their absolute discron think fit, pay all or any pt of such anny, or apply the same for the mtce & psonal support or benefit of the sd A. & his wife & chln or child & more remote issue (if any) for the time being in existce, whether minors or adults, or any of such psons to the exclusion of the others or other of them; & so much of the sd anny as shl not be applied or disposed of by my trees under the discronary trust or power lastly hinbfe contd, shl sink into & be applied as part of the income of my residuary este, *or*, "the trust premes out of wch the sd anny is payable"].

The same in the case of a woman (*h*).

X. *Beqt of anny to A. for septe use witht anticipon as in form* III. PROVD ALWAYS that if any act or event shl happen

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(*e*) Compare the form of bond for payment of annuity to husband and wife jointly, &c., Vol. I., p. 212, and note thereto.

(*f*) That this is not open to objection as being in restraint of marriage, see *Heath* v. *Lewis*, 3 De G. M. & G. 954.

(*g*) See note, p. 469.

As to restraining alienation in case of married woman.

(*h*) The restraint on anticipation is a sufficient protection in the case of a woman during coverture, and a provision creating a protected life interest (as in the case of a man) is only wanted during discoverture, and is seldom necessary at all; but the clause in the text may occasionally be useful. In a case in which a clause of forfeiture on alienation was superadded to the restraint on anticipation (as above), it was held that a mortgage executed during coverture, having no operation by reason of the restraint, did not work a eir in my lifetime or after my death while the sd A. shl be discovert, & whby such anny, &c., *as in last form, mutatis mutandis.*

General proviso for cessor of annuities on alienation. With variation as in form IX.

XI. PROVD ALWAYS, & I declare that if any act or event shl happen in my lifetime or after my death whby the anny hinbfe bequed to any pson or any pt thof wd, if belongg to him or her absolutely, become vested in or charged in favour of some other pson or psons or a corporon, then such anny shl cease as if he or she were dead, [*or*, shl cease to be payable to him or her, & shl thenceforth durg the remr of his or her life be payable to my trees upon trust that my trees shl thrafter durg such period or periods eir continuous or discontinuous, as they shl in their absolute discron think fit, pay all or any pt of such anny, or apply the same for the mtce & psonal support or benefit of the annuitants who shl have incurred such forfeiture, & his or her wife or husbd, if any, &c., *continue as in form* IX.].

Power to raise and pay annual sums for benefit of a spendthrift.

XII. I HBY authorize my trees, if in their uncontrolled discron they shl think fit, to raise out of the income of my resdy este in every yr, commencg from my death, durg the life of —— of, &c., or durg any shorter period or periods, eir continuous or discontinuous, any sum or sums of moy not exceedg in the whole £—— in any one yr [free of death duties & witht deductg income tax, both of wch shl be pd out of my resdy (psonal) este] & to pay the same by qtrly, monthly, or weekly paymts to the sd —— or to apply the same for his maintce, support, or benefit, at the absolute discron of my trees, unless & until any event shl happen, whby the same or some pt thof if belonging absolutely to him wd become vested in or chged in favour of some other pson or psons or a corporon, & in case of the happeng of any such event my trees shl thenceforth, in their uncontrolled discron, pay or apply every sum so raised to or for the benefit of the sd —— & his wife & child or chln, & remoter issue, for the time being, if any, & whether minors or adults, or any of such psons, to the exclusion of the

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forfeiture; *Re Wormald*, 43 Ch. D. 630. By the T. A., 1893, s. 45, the Court is enabled to impound the income of a married woman who has instigated a breach of trust notwithstanding a restraint on anticipation, but it does not seem necessary to extend the clause of forfeiture on alienation so as to preclude this.

others or other of them, as my trees shl think fit; [And I declare that if any action or pcdg shl be instituted for the ppose of administerg my este or executg the trusts of my will the power lastly hinbfe contd shl be exerciseable by my trees witht being subjt to the control of the ct (*a*)].

Bequest of annuity—to increase in certain event—in trust for spendthrift (*b*).

XIII. I BEQUE to my trees durg the life of A. an anny of £—— commencg from my death & to be increased to £—— p.a. from & after the death of B. shd he predece the sd A., *or as the case may be*, such anny to be free, &c., *see precedg form*, & to be payable to my trees by eql qtrly paymts, & to be apportionable (if need be) in the event of the death of the sd B. or the sd A. durg the currency of any qtr; UPON TRUST that my trees shl from time to time durg the life of the sd A. or durg any shorter period or periods, eir continuous or discontinuous, pay or apply the whole or such pt as they in their absolute & uncontrollable discron shl think fit of the sd anny of £—— or £—— (as the case may be) by qtrly, monthly, weekly, or other periodical paymts unto or for the maintce or psonal benefit of the sd A. or his wife or issue (if any) for the time being or any of such psons to the exclusion of the others or other of them in such mner in all respts as my trees may in the like absolute discron think pper, & so that they shl have full power at any time or from time to time entirely to withhd & cease the paymt or applon of the sd anny to or for the benefit of the sd A. or his wife or issue as afsd; AND I DECLARE that so much of the sd anny as from time to time shl not be applied or disposed of by my sd trees under the discronary trust or power lastly hinbfe contd shl sink into & be held & applied as pt of the income of my residy este [*add declon at end of last form*].

Trust to pay annuities out of residue after wife's death.

XIV. AND SHL after the death of my sd wife, out of the income of the sd trust premes pay an anny of £—— to —— durg his life, & an anny of £—— to —— durg her life, such respive annies to commce from the death of my sd wife, & to be payable by eql half-yrly, *or*, "qtly" paymts, & the first paymt thof to be made at the expiron of six, *or*, "three," calr

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(*a*) The Court will not interfere with the *bonâ fide* exercise by the trustees of their discretion; *Gisborne* v. *Gisborne*, 2 App. Ca. 300; *Brophy* v. *Bellamy*, L. R. 8 Ch. 798; *Re Lofthouse*, 29 Ch. D. 921.

(*b*) As to trusts of this nature, see above, p. 469, note.

months from her death, [*for a female add,* & so that the anny of the sd —— shl durg coverture be for her septe use witht power of anticipon, *& if the annies are to be inalienable in all cases add form* XI., *mutatis mutandis*].

Power or direction to appropriate fund to answer annuities (*a*).

XV. I AUTHORIZE, *or,* "direct," my trees in case at any time with a view to the due admon or distribon of my este it shl be deemed convenient so to do, to appropriate & retain a sufft part of my este, or of the investmts representg the same, for answerg by the annl income thof the sevl annies hinbfe bequed, or such of them as shl for the time being be payable, but witht prejudice to the powers of sale & investmt & transposg investmts hinafter contd, & I declare that in case the annl income of the appropriated fund shl at the time of approprion be sufft to satisfy the sd annies, such approprion shl be a complete satisfon of the trust to provide for such annies, & that in case the income of the appropriated fund shl at any time & from any cause whatever prove insufft for paymt of the sd annies in full resort may be had to the capl thof resply from time to time to make good such deficiency, & the surplus income (if any) of the sd fund from time to time remaing after paymt of the sd annies shl be applicable as income of my residy este; And I declare that as & when any of the sd annies shl cease, a correspondg pt of the appropriated fund shl sink into my residy este, *or,* "shl revert to & become subjt to the trusts hby decld concerng the sd trust premes out of wch the same shl have been appropriated as afsd."

Power to purchase annuities.

XVI. I AUTHORIZE my trees at any time or times, if & when they shl consider it convenient for the admon, windg-up, or distribon of my este, or for any other reason, to pchase annies in the names of the sevl annuitants, or, (if the case shl so require) in the names of my trees, from Governmt or any public Co [or any private pson or psons, but so that any anny so pchased from a private pson or psons shl be secd on real or leasehd este], for the ppose of answerg or satisfying the respive annies hinbfe bequed, or any of them; And I declare that any anny so pchased in the names of my trees shl be pd

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(*a*) As to the power to appropriate a fund in the investments authorized by the T. A., 1893, s. 1, see *Re Owthwaite*, [1891] 3 Ch. 494, and as to appropriations by the Court, see *Harbin* v. *Masterman*, [1896] 1 Ch. 351, and by trustees, see *Re Nickels*, [1898] 1 Ch. 630.

or applied by them to the pson or psons for the pposes & in the mner to & for & in wch the anny in respt of wch the same was pchased is hinbfe directed to be pd or applied.

Direction to purchase an annuity.
Variation where it is to be inalienable (*b*).

XVII. I DIRECT my trees to pchase in their names from Governmt or any public Co an anny of £—— [free of duty] for the life of, *annuitant*, to commce from my death, & to be payable half-yrly [qtrly], & to pay the same when pchased, & in the meantime in lieu thof to pay a like anny out of the income of my residy este, to the sd, *annuitant*, [but so that he shl not be allowed to have the value of such anny in lieu thof, & so that in case of the happeng of any act or event whby the same or any pt thof if belongg to him absolutely wd become vested in or chged in favour of some other pson or psons or a corporon, the sd anny, whether the same shl have been pchased or not, shl cease to be payable to him, & shl sink into & form pt of the income of my residy este].

Bequest of annuity charged on real or leasehold property.

XVIII. I BEQUE to A. of, &c., durg his life an anny or rentchge of £—— [free, &c. (*c*)], commencg from my death, & to be payable, &c., *as in form* I., & [togr with the duty thron] to be chged upon, & issuing & payable out of my freehd, *or*, "leasehd," messes, lands, &c., hinafter devised to D., of, &c., & subjt & chged as afsd, I DEVISE, &c.

Charge of several annuities on real or leasehold property,

XIX. AND I declare that the sd annies hinbfe bequed to the sd A., B., & C. [& the duty on such of them as are bequed free of duty], shl be chged upon, & issuing & payable out of all my real & leasehd estes [*or*, the freehd, copyhd, & leasehd

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As to right of annuitant to value of annuity.

(*b*) A direction that the annuitant is not to have the value of the annuity is void (*Stokes* v. *Cheek*, 28 Beav. 620) unless there is a gift over (*Power* v. *Hayne*, L. R. 8 Eq. 262) or proviso for cesser (*Hatton* v. *May*, 3 Ch. D. 148) on alienation, but such a proviso is repugnant and void if the annuity is to be purchased in the name of the annuitant himself (*Hunt-Foulston* v. *Furber*, 3 Ch. D. 285). A direction to accumulate surplus income, after providing for an annuity, is void as against a residuary legatee absolutely entitled; this is not so, however, where the residuary legatees are married women restrained from anticipation (*Re Spencer*, 30 Ch. D. 183). Where there was a gift by will of life annuities charged on land devised to trustees in trust for sale, and the trustees were empowered to purchase government annuities for the annuitants out of the proceeds of sale, the trustees having sold the land and set apart sufficient sums to purchase government annuities, it was held that the personal representatives of one annuitant, who had died after the contract for sale was entered into, but before completion, were not, but that the personal representatives of the other annuitant, who had died after completion, were, entitled to the value of the annuity; *Re Mabbett*, [1891] 1 Ch. 707.

(*c*) See p. 720, note (*a*).

with powers of distress and entry (*a*).

messes, lands, & hds, situate, &c., hinafter devised & bequed to D., of, &c.], [& shl be exclusively so chged in exoneron of my genl este, *or*, "in aid of my genl psonal este, wch shl be the primary fund for the paymt thof"]; [& I empower the sd A., B., & C., resply, [& their respive assns (*b*)], to recover paymt of the sd respive annies [& the duty on such of them as are bequed free of duty] & all expses incident to such recovery by distress & entry upon, & rect of the rents & profits of the hds so chged thwith as afsd, or any pt thof, when in arrear for twenty-one days], & subjt to the paymt of the sd respive annies [& duty] so chged as afsd, & to all powers & remedies for the recovery thof, I DEVISE, &c.

Power to continue allowances paid by testator.

XX. PROVD ALWAYS & I authorize my trees in their uncontrolled discron to continue any annies or charitable or other allowces, donons, or subscriptions wch I shl have pd in my lifetime, or any pt thof, [or shall within one year before my death have promised to pay], durg such time or times as they may think fit.

GIFTS OF RESIDUE.

Personalty to beneficiary. Full form.

I. I BEQUE all the psonal este & effects whatsr & wheresr of or to wch I shl be possed or entled at the time of my death, or over wch I may have a genl power of apptmt or disposon (*c*),

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(*a*) For a full form of powers of distress and entry, see p. 585. These powers may be omitted altogether, as they are given by the C. A., 1881, s. 44; see p. 582, note (*b*).

(*b*) The words bracketed will, of course, be omitted if the annuities are to be inalienable.

As to residuary gifts under power of appointment.

(*c*) A general devise or bequest of real or personal estate operates without express words, under s. 27 of the Wills Act, as an exercise of any *general* powers of appointment vested in the testator, unless a contrary intention appears; and will so operate, to the full extent of the power, where it is limited to a specified amount (*Re Jones*, 34 Ch. D. 65). It may operate as an exercise of a power subsequently created and coming into operation before the testator's death (*Boyes* v. *Cook*, 14 Ch. D. 53; *Re Hernando*, 27 Ch. D. 284; *Airey* v. *Bower*, 12 App. Cas. 263); *secus*, of course where the power does not arise till after his death (*Jones* v. *Southall*, 32 Beav. 31). As to a power exerciseable in favour of all the world except certain specified objects, see *Re Byron*, [1891] 3 Ch. 474. It is usual, in order to preclude doubt, to refer expressly to *general* powers, as above.

As to powers of revocation, &c.

A general bequest not referring either to the particular power or the property, will not, under s. 27 of the Wills Act, operate as an exercise of a power of by will & not hby orwise disposed of, [except chattels real], subjt to & after paymt of my funl & testy expses & debts, & the legacies & annies bequed by this my will, or any codl hto, & the duty on any legacies or annies bequed free of duty, Unto A., of, &c., for his absolute benefit.

Realty and leaseholds to beneficiary. Full form.

II. I DEVISE all my manors, messes, lands, tenemts, & hds, of whatsr tenure, & wheresr situate, *or*, "all my real & leasehd estes whatsr & wheresr," *or*, "all my real este, includg chattels real" (*d*), of or to wch I shl at my dece be seised, possed, or entled, or over wch I may have a genl power of apptmt or disposon by will & not hby orwise disposed of, [chged in aid of my psonal este with the paymt of my funl & testy expses & debts, & the legacies & annies bequed by this my will, or any codl hto, & the duty on any legacies or annies bequed free of duty] UNTO & TO THE USE of A., of, &c., his hrs, exs, ads, & assns resply, for his & their absolute benefit.

Realty and per-

III. I DEVISE & beque all the residue of my psonal este &

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revocation and new appointment (*Charles* v. *Burke*, 43 Ch. D. 223, n.; *Re Brace*, [1891] 2 Ch. 671), or a power exerciseable only by a will expressly referring to the power or the property; *Re Tarrant*, 58 L. J. Ch. 780; *Phillips* v. *Cayley*, 43 Ch. D. 222; *Re Davies*, [1892] 3 Ch. 63.

Appointed fund assets.

The question whether when a general power of appointment is exercised by the will, even though only partially or ineffectually, the property subject to the power becomes part of the testator's assets for all purposes, is discussed, *Re Boyd*, [1897] 2 Ch. 232.

As to special powers.

A general devise and bequest referring to powers of appointment, *Re Swinburne*, 27 Ch. D. 696 (observed upon in *Re Cotton*, 40 Ch. D. 41), *Von Brockdorff* v. *Malcolm*, 30 Ch. D. 172, and a mere general devise or bequest without any express reference to powers, *Re Wait*, 30 Ch. D. 617; *Re Mills*, 34 Ch. D. 186; *Re Williams*, 42 Ch. D. 93; *Re Huddleston*, [1894] 3 Ch. 595, may, if there is a sufficient indication of intention, operate as an exercise of a special power.

Rule against perpetuities.

In the case of the exercise of a *general* testamentary power, time under the rule against perpetuities runs from the appointor's death, and not from the date of the creation of the power; and the circumstance that the donee of the power is a married woman makes no difference, *Rous* v. *Jackson*, 29 Ch. D. 521; not following *Re Powell*, 39 L. J. Ch. 188, a case which was opposed to the previously generally received opinion, and was calculated to cause much inconvenience, and which may be taken not to be law.

Charge of legacies by residuary gift.

A gift of all the "residue" of the testator's real and personal estate (*Greville* v. *Browne*, 7 H. L. C. 689), or of all the real and personal estate "not otherwise disposed of" (*Re Bawden*, [1894] 1 Ch. 693), has the effect of charging the legacies on the real estate.

(*d*) A general devise of "land" will pass leaseholds unless a contrary intention is shown, see the Wills Act, s. 26; but a gift of "real estates" will not pass leaseholds for years (*Butler* v. *Butler*, 28 Ch. D. 66). If leaseholds are not intended to be included they should be expressly excepted.

sonalty to beneficiary.

effects whatsr & wheresr, & all my real este of every tenure & wheresr situate, not hby orwise disposed of (includg as well real as psonal este over wch I may have any genl power of apptmt or disposon by will) UNTO & TO THE USE of A., of, &c., his hrs, exs, ads, & assns resply, for his & their absolute benefit.

The same. Short form.

IV. I DEVISE & beque all the residue of my este & effects, whether real or psonal, UNTO & TO THE USE of A., of, &c., his hrs, exs, & ads, absolutely.

Personalty to trustees.

V. I BEQUE all my psonal este & effects whatsr & wheresr, of or to wch I shl be possed or entled at the time of my death, or over wch I may have a genl power of apptmt or disposon by will [except chattels real] not hby orwise disposed of (*a*) UNTO, *trees*, [upon the trusts & subjt to the powers & provons hinafter decld & contd concerng the same, that is to say,] UPON TRUST, &c.

Realty and leaseholds to trustees.

VI. I DEVISE all my manors, messes, lands, tenemts, & hds, of whatsr tenure & wheresr situate, *or*, "all my real & leasehd estes whatsr & wheresr," *or*, "all my real este includg chattels real" (*b*), of or to wch I shl at my dece be seised, possed, or entled, or over wch I may have any genl power of apptmt or disposon by will not hby orwise disposed of, UNTO & TO THE USE of, *trees*, their hrs, exs, & ads resply, accdg to the tenure thof, [upon the trusts, &c., *as in last form*].

Realty where copyholds are to be sold (*c*).

VII. I DEVISE all my estes & hds of copyhd or customary tenure [not hby orwise disposed of] to such uses, upon such trusts, & subjt to such powers & provons as, *trees*, or the survors or survor of them, or other the trees or tree for the time being of this my will (hinafter called my trees) shl by deed appt for the ppose of carrying into effect any sale or sales in psuance of the trust hinafter contd; AND I DEVISE all my real este of every tenure, includg chattels real [except what I

(*a*) This form is adapted to the case where the trusts provide for payment of the funeral, &c., expenses, debts, and legacies; otherwise insert here, "subjt to & after paymt, &c.," as in form I.

(*b*) See note (*d*) last page.

(*c*) This form should be used where the testator has copyholds which are to be sold, the object being to enable the trustees to convey by appointment to the purchaser without being admitted, so as to save the fine on their admittance. See Vol. I., p. 529, note.

orwise dispose of by this my will or any codl hto], but as to copyhd or customary hds in default of & subjt to any apptmt under the power hinbfe contd : UNTO & TO THE USE, &c., *as in last form.*

Realty and personalty to trustees.

VIII. I DEVISE & beque all my real este of every tenure, & all my psonal este & effects whatsr & wheresr, not hby orwise disposed of (includg as well real as psonal este over wch I may have any genl power of apptmt or disposon by will) (*d*) UNTO & TO THE USE of, *trees*, their hrs, exs, & ads resply, accordg to the nature thof, [upon the trusts & subjt to the powers & provons hinafter decld & contd concerng the same, that is to say,] UPON TRUST, &c.

Devise and bequest to executors absolutely to carry out arrangements *dehors* will.

IX. I DEVISE & beque all the real & psonal este, whether in posson, revon, remr, or expectancy, over wch I have or may hrafter acquire any power of disposon by will, to my exors absolutely, And I declare that in makg them universal legatees & devisees my object has been to simplify the windg up of my affairs & the arrangemts under conson with regard to my estes, And witht in any way derogatg from the absolute & uncondonal gift made to them or imposg any obligon or responsibility upon them, I hope that it may be possible for them to carry out the wishes expd in a signed letter & memdum left by me & deposited with this my will.

CONVERSION AND INVESTMENT.

Trust for sale and conversion of real and personal estate (*f*).

I. UPON TRUST that [(*e*) the sd, *trees*, or the survors or survor of them, or other the trees or tree for the time being of this my will, hinafter called] my trees, shl sell, call in, collect & convert into moy the sd real & psonal este & premes at such

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(*d*) If the trusts do not provide for the payment of the funeral, &c., expenses, debts, and legacies, insert here, "subjt to & after paymt out of my psonal este, [or in case of deficiency thof, out of my real este,] of my funl & testy expses, &c.," as in form I.

(*e*) The words in this bracket will be omitted if the phrase, "my trees," is elsewhere defined.

(*f*) For a power to sell the surface and minerals separately where the property contains minerals, see p. 630, form LXVI.; for a power to sell for fee time or times, & in such mner as they shl think fit (but as to revy ppty not until it falls into posson, unless it shl appear to my trees that an earlier sale would be benefl), & so that they shl have the fullest power & discron to postpone (*a*) the sale, callg

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farm rents, see pp. 622, 631; for a special provision where the trust estate comprises an undivided share, see p. 635; for a power to partition in the like case, see p. 785, form VI. As to the effect of the S. L. A., 1882, as amended by the Act of 1884, where there is a trust for sale, and a tenant for life, or limited owner, of the proceeds of sale and the rents and profits till sale, see p. 494, note.

Effect of S. L. Acts.

As to trust or power of sale for payment of debts.

It seems that in the case of a trust, or power, of sale for payment of debts, the tenant for life of the proceeds, subject to the debts, would be a tenant for life within the Act, but that as the trust or power is paramount to the settlement, his consent to a sale by the trustees or executors would not be necessary (see as to this, Vol. I., p. 484, note). Where recourse to the real estate for payment of debts is likely to be necessary, it would generally be desirable to insert a power to raise money by mortgage for the purpose (see the form, p. 735), which would be exerciseable without the concurrence of the beneficiaries.

In *Re Hotchkys*, 32 Ch. D. 408, a discretionary trust for sale, followed by clauses treating the property as a mixed fund of realty and personalty, was held to be a power of sale only; this, though not unfrequently met with in practice, is an inartistic and bad form of trust, and should be avoided. An imperative trust for sale operates as a conversion from the testator's death, notwithstanding a discretion as to the time of sale (*Re Raw*, 26 Ch. D. 601; *Re Heathcote*, W. N. 1887, p. 217), or a restriction as to consents.

Duration of trust for sale.

That a *trust* (as distinguished from a mere power) for sale for purposes of division continues notwithstanding that all the beneficiaries have attained a vested interest and are *sui juris*, unless and until they combine to put an end to the trust by electing to take the property as realty, see *Biggs* v. *Peacock*, 22 Ch. D. 284; *Re Tweedie*, 27 Ch. D. 315; *Re Henzell*, W. N. 1887, p. 240; but a mere *power* of sale given to trustees after the beneficial interests have vested absolutely in possession cannot be exercised; *Lantsbery* v. *Collier*, 2 K. & J. 709, unless it is given for the purpose of division, so as to be exerciseable within a reasonable time after the property has vested in possession, *Peters* v. *Lewes, &c., Ry. Co.*, 18 Ch. D. 429; *Re Sudeley & Baines*, [1894] 1 Ch. 334; or unless there is a charge of debts or legacies; *Re Dyson & Fowke*, [1896] 2 Ch. 720; see further on the duration of trusts and powers of sale, 32 Sol. J., 689, 705, 718, 729, and for payment of debts, *ante*, Vol. I., 449.

As to prohibiting sale.

A testator sometimes desires to prohibit the sale of his estates, but although this can be done so far as the provisions of the Settled Estates Act, 1877, are concerned (see s. 38, and *Re Peake*, [1893] 3 Ch. 430), the powers of the S. L. A., 1882, cannot be excluded (see s. 51); and such a prohibition would therefore seldom be effectual.

As to giving powers of leasing, &c., to trustees for sale.

In wills containing a trust for sale and conversion and for division of the proceeds into shares, the powers of leasing as well as other necessary powers are usually vested in the trustees; and it will in general be expedient to give express powers to the trustees, which may be done by a short clause referring to the S. L. Acts; see *infra*, p. 786, form VII.

(*a*) A power to postpone the sale excludes the rule in *Howe* v. *Dartmouth*, 7 Ves. 137; *Re Pitcairn*, [1896] 2 Ch. 199.

in or conversion of the whole or any pt or pts of the sd premes [includg leasehds or other ppty of a terminable or wearg out nature] durg such period as they shl think pper, witht being responsible for loss.

Details of trust for sale (*b*).

II. AND I declare that my trees may sell the sd real & psonal este & premes hinbfe devised & bequed in trust for sale subjt or free from any mtges or chges affectg the same, & eir togr or in pcels, & eir by public auction or private contract, & upon such terms & subjt to such condons & in such mner in all respts as they shl think fit, with power to buy in or rescind or vary any contract for sale, & to resell witht being responsible for loss, & for the pposes afsd to exte & do all such assurces & things as they shall think fit.

Power to trustees to sell real and leasehold estate (*c*).

Variations where the power extends to personal estate.

III. I AUTHORISE my trees at any time or times durg the continuce of the trusts of this my will at their discron to sell the whole or any pt or pts of my residy real & leasehd estes & hds [*or*, my real & residy psonal este]; & I declare that my trees shl stand possed of the net proceeds of any such sale, after paymt of the expses thof [upon the trusts & subjt to the powers & provons hinbfe decld & contd of & concerng the net proceeds of the sale of my residy psonal este], [*or*, *if the psonal este is included in the psnt power of sale*, upon trusts at the like discron to invest the same in or upon, &c., *investmts, see* "SETTLEMTS, PSONAL," pp. 459 to 463, *form* III., IV., V., VI., VII., *or* VIII., with power at the like discron to vary or transpose such investmts into or for others of any nature hby authorised;

(*b*) This clause may, and in ordinary cases ought to, be omitted in reliance on s. 13 of the T. A., 1893. See p. 494, note (*b*).

As to power instead of trust for sale.

(*c*) This form is adapted to a will containing a residuary devise in trust without any trust for conversion, but not to real estate specifically devised. If the case is within the S. L. Acts, 1882 to 1890, the power must of course be subject to the statutory provisions as to the consent of the tenant for life being necessary; and also to the statutory provisions as to the re-investment of the purchase-money, see Vol. I., p. 473, note. In this form the real estate when converted becomes personalty without any constructive re-conversion. For forms of powers of sale providing for re-investment in land, so that the proceeds of sale retain the character of realty, see below DEVISES IN STRICT SETTLEMENT. For other powers, see the references in p. 729, note (*f*). As to the power of trustees who are also executors to sell in consideration of shares and bonds of a company, see *West of England, &c., Bank* v. *Murch*, 23 Ch. D. 138; *Re Crawshay*, W. N. 1888, p. 247; 60 L. T. 357. The Court has no jurisdiction to interfere with the discretion given by the will to a sole trustee who is also tenant for life, as to selling leaseholds (*Re Courtier*, 34 Ch. D. 136).

And shl hold such net proceeds of sale (whether arisg from real or psonal este) & the investmts thof, Upon the trusts & subjt to the powers & provons hinbfe decld & contd of & concerng my residy psonal este,] & so that the proceeds of the sale of my real este, & all investmts of such proceeds, shl, for the ppose of transmission as well as for all other pposes, be deemed psonal este.

Option to sons to purchase real or leasehold estate at a fixed price or valuation (*a*).

IV. I DECLARE that my sons ——, ——, & ——, shl have the option in succon, accdg to their respive seniorities, of pchasg my —— & hds, situate, &c., at the price of £—— [at a valuon to be made by a valuer appted by my trees], such option to be decld in writg by my eldest son within six calr months after my death, & by each of my other sons within one calr month after the expiron of the period allowed to the son next precedg him in seniority, but so that my trees shl have power to extend the time so allowed to each or any of my sd sons in case they shl think it reasble, & I direct my trees, on paymt of the pchase-moy for the same, to assure the sd hds & premes to the son pchasg the same, or as he shl direct, Provd always that after the sd premes shl have been so assured no pson claimg under such son shl be in any mner affected by any irregularity or want of compliance with the provons hinbfe contd resptg such successive options as afsd.

Power to son who is a trustee to purchase real or personal estate.

V. I HBY AUTHORISE my sd son A., notwg his being a tree of this my will, to pchase any pt or pts of my real or psonal este hinbfe devised & bequed in trust as afsd, at any sale or sales thof by public auction, or by private contract, provd in the latter case the sale shl be conducted by the trees or tree of my will, other than the sd A., or be made at a price fixed by a valuer appted by such other trees or tree.

Provision for testator being entitled to undivided share under settle-

VI. PROVD ALWAYS & I declare that in case at my dece I shl be entled to any undivided share or shares of the moys to arise from the sale of any real or leasehd ppty held in trust for sale, & wch undivided share or shares shl form pt of my residy este, my trees may at any time join with the owners or owner of or the psons or pson havg power in that behalf in

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(*a*) As to this clause, see 4 Dav. Prec. 260, note; and *Re Barnes*, W. N. 1883, 131. That an option to purchase, personal to the donee of such option, is an interest not transmissible to his executors, see *Re Cousins*, 30 Ch. D. 203.

relon to the other undivided shares or share of the moys to arise from such sale, in electg to take such real or leasehd ppty or any pt thof in its actual state, & dischged from the sd trust for sale, in wch case the share or shares thof belongg to my trees shl be conveyed or assured to them & held upon the like trusts for sale & orwise, & subjt to the like powers & provons in all respts as far as the case may admit, as if such share or shares had origlly formed pt of my residy real or leasehd ppty (as the case may be) [Provd also & I declare that in case any undivided share or shares of real or leasehd ppty shl be comprd in the residy devise in trust for sale hinbfe contd, or in case under the last precedg provon any undivided share or shares of real or leasehd ppty shl be conveyed or assured to my trees & become subjt to such trust for sale as afsd, then & in any such case I empower my trees to invest & apply any pt of my residy psonal este or the trust premes representg the same (& for that ppose to convert into moy any investmts formg pt thof) in the pchase of any other undivided share or shares of such real or leasehd ppty, wch shl be conveyed or assured to my trees & held upon the like trusts for sale & orwise, & subjt to the like powers & provons as far as the case may admit, as if the share or shares so pchased had origlly formed pt of my residy real or leasehd ppty, as the case may be]. ment of real estate (*b*).

VII. I AUTHORISE my trees, in substitution for the power conferred on psonal representatives by the 4th s. of the L. T. A. 1897, at any time or times [with the consent in writg of such of my chln as shl then be livg & of full age, or the majority in no. of them, & if there shl be no such child] at their discron, to appropriate any pt of my este, whether

Power to allot specific property in satisfaction of legacy or share of residue (*c*).

(*b*) The powers given by this clause would often be beneficial.

(*c*) An executor or trustee has power, even without express authority, to agree with a legatee to appropriate a specific portion of the estate to him; *Re Lepine*, [1892] 1 Ch. 210; even if the legacy is settled; *Re Nickels*, [1898] 1 Ch. 630. See now the power for personal representatives to appropriate the whole or any part of the deceased's estate in or towards satisfaction of a legacy or share on a valuation, in accordance with the prescribed provisions; L. T. A., 1897, s. 4. No provisions have yet been prescribed. Irrespective of the Act, executors may appropriate assets to a trust share of residue or in satisfaction of a legacy before the final division of the estate. *Re Richardson*, [1896] 1 Ch. 512. There is no apportionment of the dividends of the appropriated property, *Re Clarke*, 18 Ch. D. 160.

real or psonal, hinbfe devised & bequed to my trees in trust [for conversion], in its then actual condon or state of investmt in or towards satisfon of any legacy or share in the sd trust premes, with power for that ppose conclusively to determine the value of the sd trust premes or any pt or pts thof in such mner as they shl think fit, [Provd also & I declare that any ppty appropriated under the power lastly hinbfe contd in satisfon of any legacy or share not absolutely vested in posson & immedly payable or transferable shl, notwg such approprion, remain subjt to the [trusts &] powers of sale & conversion & investmt & varying investmts & leasg & managemt [until sale] hrin decld & contd concerng the sd trust premes hinbfe devised & bequed in trust as afsd, or such of the same trusts & powers as may be applicable thto, in the same mner as if no such approprion had been made].

Power to partition testator's property without conversion.

VIII. I AUTHORISE my trees at their discron to make a parton of my net residy este, real or psonal, or any pt or pts thof, into shares, & to allot such shares in satisfon wholly or in pt of the sevl shares of the sd trust premes, with power for that ppose conclusively to determine, &c., *continue as in precedg form.*

Trust of proceeds of conversion for payment of debts, legacies, &c.

IX. AND SHL out of the moys to arise from the sale, callg in, & conversion of or formg pt of my sd [real &] psonal este, pay my funl & testy expses & debts & the legacies bequed by this my will or any codl hto & make provon for [the paymt of any annies so bequed, &] the duty on any legacies or annies bequed free of duty.

Marshalling clause throwing legacies on personal estate (*a*).

X. PROVD ALWAYS & I declare that the legacies hinbfe bequed [other than the legacy & anny bequed to my sd wife & the legacies bequed to my father, mother, chln, & other issue,

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Legacy and succession duties.

(*a*) On the death of the testator the succession duties imposed by the Succession Duty Act, 1853, and the additional duties imposed by the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), are payable on his real estate and on legacies charged on or payable out of the proceeds of realty: Act of 1888, s. 21 (2). If estate duty is payable (as will generally be the case) neither succession or legacy duty at the rate of £1 p.c., nor the additional succession duties under the Act of 1888 will be payable. Leaseholds (which are held in practice to include leaseholds for lives) are liable to succession duty under the Act of 1853, but not to the additional duty under the Act of 1888: see s. 21 (1). Legacies payable out of personal estate, or charged on or payable out of the proceeds of leaseholds for years, are liable to legacy duty, not to succession duty: Act of 1888, s. 21 (2). No legacy or succession duty was ever payable on a gift to the testator's husband or wife, and neither legacy duty, wch anny & legacies are hinafter refd to as the excepted legacies] & the duty on any legacies bequed free of duty shl be borne & pd by & out of my psonal este (inclusive of leasehds) or the proceeds thof as the primary fund for the paymt thof, & that my real este or the proceeds thof shl be had recourse to for that ppose only in the event of the deficiency of my psonal este (inclusive as afsd) or the proceeds thof for such paymt & as the secondary fund & that my funl & testy expses & debts [& the excepted legacies] shl be borne & pd primarily by & out of my real este or the proceeds thof in exoneron of my psonal este & that my assets shl be marshalled accdly.

Power to raise money on mortgage for payment of debts, &c.

XI. I AUTHORISE my trees to raise on mtge of any of the real or psonal ppty hinbfe devised & bequed to them in trust as afsd all or any moys wch may be required for the paymt of my funl & testy expses & debts & legacies, or for any of the pposes of this my will, but so that no mtgee advancg moy on a mtge purportg to be made under this psnt power shl be concerned to see that such moy is wanted, or that no more than is wanted is raised, & to secure the repaymt of any moys so raised as afsd with intt at such rate as may be thought pper by mtge in fee simple or for any term of yrs or orwise of the ppty to be chged thwith, with such powers & provons & upon such terms in all respts as my trees shl think fit; & I declare

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succession duty, nor additional succession duty is payable on a gift by will to the issue or lineal ancestor of the testator, as the property is necessarily subject to estate duty under the Finance Act, 1894 (see s. 1).

Under 36 Geo. 3, c. 52, s. 21, legacy duty is not to be paid on money left to pay it. Under the Succession Duty Act, s. 18, succession duty is not to be paid on moneys applied in payment of the duty according to any trust; but there is no exemption from legacy duty of moneys to be applied in payment of succession duty, or *vice versâ*.

The practical result appears to be that some slight saving of duty may be made by making legacies liable to duty payable out of personal estate including leaseholds for years, so as to be liable to legacy instead of succession duty; and where a legacy is given duty free by making the duty and the legacy payable out of funds proceeding from the same source.

The form in the text is applicable where large legacies are given, which may possibly exhaust the personal estate. In the common case of the proceeds of conversion of real and personal estate being given, subject to payment of legacies which are small in amount, on trusts for the widow and children, it will suffice to say, "I declare that the legacies hinbfe bequed & the duty on such of them as are bequed free from duty shl be primarily paid out of my psonal este incldg leasehds for yrs."

that if my trees shl raise more moys by any such mtge than may be required for the pposes afsd they shl hold the surplus upon the same trusts as if the same had arisen from a sale of pt of my residy real & psonal este.

Power to postpone conversion of real and personal estate (*a*).

XII. PROVD ALWAYS & I empower my trees in their uncontrolled discron to postpone durg such period as they shl think fit the sale, callg in, & conversion of the whole, or any pt or pts of my este, real or psonal [& they shl not sell any pt thof durg the life of my wife witht her consent in writg], but notwg any such postponemt of conversion of my real este the same shl for the ppose of transmission be considered as converted from the time of my death.

Declaration as to income of real and personal estate until conversion (*b*).

XIII. I DECLARE that all the net rents, profits, & income arisg from my este, real or psonal, until the sale, callg in, & conversion thof, in whatsr condon or state of investmt the same may be & whether consistg of investmts of an authorised character or not (includg leasehds or other ppty of a terminable or wearg out nature) shl for all the pposes of this my will, & as betn all psons intted hrunder, & as well durg the first yr after my death as aftwds, be applied as if the same were income arisg from the proceeds of such sale, callg in, or conversion, or the investmts of such proceeds, no pt thof being liable to be retained as capl, but that no revon or other ppty not actually producg income shl be treated as producg income for the pposes of this my will [& that all annies, yrly rents, &

(*a*) This may if preferred be incorporated in the trust for conversion as in form I., p. 729. The power to postpone conversion operates as a power to carry on business, see *Re Crowther*, [1895] 2 Ch. 56, but not for an indefinite time, *Re Smith*, [1896] 1 Ch. 171.

As to the right to income till conversion.

(*b*) The main object of this clause is to exclude the operation of the rule in *Howe* v. *Lord Dartmouth*, 7 Ves. 137 (see W. & T. L. Cases Eq.; *Porter* v. *Baddeley*, 5 Ch. D. 542), as to wasting securities; and the rule in *Dimes* v. *Scott*, 4 Russ. 195, as to the income during the first year from the testator's death, *Re Lynch Blosse*, [1899] W. N. 27. As to the right of a tenant for life to receive the income of unauthorized securities retained under a power in the will, which are not of a wasting nature, see *Re Sheldon*, 39 Ch. D. 50; *Re Thomas*, [1891] 3 Ch. 482, where the securities were redeemable at par at a future date, but the market value was considerably above par; and see as to real estate *Hope* v. *D'Hedouville*, [1893] 2 Ch. 361. As to the right of the tenant for life to the profits of a business, see *Re Chancellor*, 26 Ch. D. 42. As to the apportionment between the tenant for life and remainderman of the burden of an annuity charged on real estate, see *Re Muffett*, 39 Ch. D. 534. As to apportionment between capital and income of property falling in after testator's death, see *Re Chesterfield*, 24 Ch. D. 643; *Re Morley*, [1895] 2 Ch. 738; *Re Hubbuck*, [1896] 1 Ch. 754.

other periodical paymts, payable out of my este, not being instalmts of ppal moy, shl be pd or satisfied out of the annl rents, profits, or income of my sd residy este].

Provision for reserving part of rents of leaseholds as depreciation fund.

XIV. PROVD ALWAYS & I direct that in case of leasehds held for any term not exceedg —— yrs from my death wch may form pt of my este, my trees shl retain & set apt as a deprecion fund durg a period of —— yrs from my death or until all such leasehd shl have run out or been sold (if the same shl happen bfe the expiron of such —— yrs) one —— pt of the gross rents & profits arisg from such respive leasehds (includg an apportioned pt of any rents accrug due at the end of such —— yrs or any earlier time when the same shl be sold) with power to determine conclusively the precise amt to be so retained, & shl durg such period of —— yrs or until all such leasehds shl have run out or been sold as afsd, accumulate such fund by investg the same & the resultg income thof in or upon any such investmts as are hinbfe authorised with power to vary the same from time to time at discron. AND shl from & after the expiron of such period of retainer & accumulon stand possed of such accumulated fund & the income thof upon the trusts hinafter decld of the investmts of the proceeds of sale & conversion of my residy este & the income thof, & so as thenceforth to be added to & form pt of the same for all pposes. AND subjt to such retainer & accumulon as afsd, I declare that all the net rents, profits, income, & annl produce of my sd residy este, &c.

Clause excluding rule in *Allhusen* v. *Whittell* (c).

XV. PROVD ALWAYS & I declare that notwg any rule of law or equity to the contrary my funl & testy expses & debts, inclusive of the intt on such debts, wch may have accrued due from me at the date of my death, shl be pd out of the corpus or capl of my este to the exclusion of any rents, profits, or income accrug from or in respt of my este from & after my death, & that no pt of the rents, profits, or income of my este accrug from & after my death, shl be applied in paymt of my

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As to rule in *Allhusen* v. *Whittell*.

(c) The object of this clause is to exclude the operation of the rule (which is practically inconvenient) in *Allhusen* v. *Whittell*, L. R. 4 Eq. 295, and *Lambert* v. *Lambert*, L. R. 16 Eq. 320 (applied to real estate in *Marshall* v. *Crowther*, 2 Ch. D. 199) as to the right of a tenant for life to the income of the funds required for payment of debts and legacies pending their application for that purpose.

funl or testy expses or debts, or the intt thof, except any intt accrug due from my este from & after my death, nevs I empower my trees, in case it shd be deemed pper or expedient so to do, whether for convenice in makg out the accts of my este or orwise, to modify the rule lastly hinbfe laid down by me to any extent & in any mner they may think fit.

Trust for investment of residue or legacy.

XVI. AND SHL (*a*) at the discron of my trees invest the residue of the sd moys [the sd sum of £——] in the names [or under the legal control (*b*)] of my trees in or upon, &c., *investmts & power to vary, see* "SETTLEMTS PSONAL," p. 459 *et seq., forms* III. *to* VIII., *omittg if necy the words,* "with such consent or," *in the power to vary,* [*or if an investmt clause in anor pt of the will is referred to, say,* "in or upon any stks, funds, or secs hinbfe, *or,* 'hinafter,' authorised as investmts in the case of the sd legacy of £——, *or* 'my residy este' (*c*), & may [with such consent or] at such discron as afsd vary or transpose such investmts into or for others of any nature hby authorised"].

Direction for investment of a

XVII. PROVD ALWAYS, & I direct that my trees shl invest the legacy, *or,* "share of my residy este," *or* "of the sd

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Provisions as to consent to investments.

(*a*) If the investment is to be with the consent of the beneficiaries, say, in the case of testator's widow, "with the consent in writg of my sd wife durg her life [widowhood], & aftwds, at the discron, &c.;" in the case of any other tenant for life, "with the consent in writg of the sd, *tenant for life,* durg his [her] lifetime, & aftwds, at the discron, &c.;" in the case of successive tenants for life, "with the consent in writg of the sd, *tenants for life,* or the survor of them, durg their, his, or her lifetime, & aftwds, &c.;" where there may be infants entitled in possession, "with the consent in writg of the psn or psns of full age, if any, for the time being entled to the income of the sd trust premes or any pt thof, & orwise at the discron, &c." Sometimes the provision as to consents is more conveniently inserted in a separate clause as in form XX., *infra.*

(*b*) These words to be inserted where any securities passing by delivery are authorised. For a form prohibiting securities of this nature, see p. 460, form III.

(*c*) The following is sometimes added, "or in or upon any stks, funds, shares, or secs of a description similar to those in wch any pt of my psonal este may be invested at the time of my dece."

For a power to lend on a second or contributory mortgage, and a power to deposit securities for safe custody, &c., see pp. 464, 465.

trust premes," hinbfe bequed to or in trust for the sd —— [with his consent in writg durg his life if of full age & at any other time] at the discron of my trees, in the names, &c., *as in last form.*

legacy or share given to an infant or settled (*d*).

XVIII. PROVD ALWAYS, & I direct that my trees shl invest every legacy, *or,* "share of my residy este," *or,* "of the sd trust premes," wch shl not be absolutely vested in posson & immedly payable or transferable [with the consent in writg of the pson of full age (if any) for the time being entled to the income thof, & in case there shl be no such pson] at the discron, &c., in the names, &c., *as in form* XVI.

General direction for investment of all legacies or shares settled or given to infants (*d*).

XIX. I AUTHORISE my trees to invest any moys formg pt of the trust este under this my will wch may at any time be in their hands & requirg investmt, in their names [or under their legal control], & at their discron in or upon, &c., *investmts & power to vary, see* "SETTLEMTS PSONAL," pp. 459 *et seq., form* III. *to* VIII., *omittg the words* "with such consent or," *in the power to vary form* IX.

General power of investment.

XX. PROVD ALWAYS, & I declare that durg the lifetime of my sd wife no sale or investmt or transposon of investmt of any pt of the sd trust este & premes in wch she shl for the time being be inttd, shl be made witht her consent in writg, & that after the death of my sd wife, no sale or investmt or transposon of investmt of any pt of the sd trust este & premes wch shl have been appropriated in or towards satisfon, or as pt of the share of any of my sd daurs in the sd trust este & premes shl be made witht the consent in writg of such daur, if livg & of full age.

Consent to investments.

XXI. I AUTHORISE my trees at any time to lend to the sd K. for the pposes of the sd business any sum or sums of moy not exceedg in the whole the sum of £—— out of the trust premes, for such period as they may think pper. *Add any of the provons at* p. 465, *form* XIV., *wch may be appropriate* [*If K. is a tree add,* PROVD ALWAYS that my trees other than the sd K. may call in & compel paymt of the sd loan, as & when the same shl become payable, but witht being in anywise responsible for loss occsd by any omission or neglect so to do].

Power to lend trust funds to son for business purposes.

(*d*) For a form providing also for maintenance, &c., see above, p. 711.

GENERAL POWERS OF APPOINTMENT.

General power of appointment to one.

I. IN TRUST for such pson or psons (*a*), for such ppses, & in such mner as the sd, *donee*, shl from time to time [by any deed or deeds revocable or irrevocable or] by will or codl appt; AND IN DEFAULT of & subjt to any such apptmt, IN TRUST, &c.

The same to two and the survivor.

II. IN TRUST, &c., *as above*, as the sd, *donees*, shl from time to time by any deed or deeds revocable or irrevocable jtly appt, & in default of & subjt to any such apptmt, then as the survor of them the sd, *donees*, shl, after the dece of the one of them first dying, from time to time in like mner or by will or codl appt; AND IN DEFAULT of & subjt to any apptmt under the respive powers hinbfe contd, IN TRUST, &c.

LIFE INTERESTS (*b*).

Life interest in personalty. Variations for realty or a mixed fund of realty and personalty. Variation for real estate.

I. AND SHL pay the income of the sd sum of £——, *or*, "share," & the investmts representg the same, *or*, "the sd trust premes constitutg or representg my residy este," *or*, "my sd residy trust este (*c*)," to the sd ——, durg his [her] life [widowhood] (*d*).

(*a*) For real estate, insert here, "for such este or estes, intt or intts subjt to such powers & provons:" and if the limitations are legal, say, "to the use of," instead of, "in trust for."

(*b*) The forms under this and the next three headings are adapted only to real and personal estate held in trust. For legal limitations of real estate, see SPECIFIC DEVISES, and DEVISES IN STRICT SETTLEMENT.

Variations for real estate.

(*c*) For real estate not directed to be converted, say, "net rents & profits of the sd hds & premes [after paymt of all outgoings & expses, wch may be payable, or wch my trees may think fit to pay throut, & the intt on any ppal sums, & any annl sums chged thron"]. For a mixed fund of realty and personalty, say, "net rents, profits, intt, divds, & annl produce [*or*, rents, profits, & income] of the sd real & psonal este & premes [after paymt, &c., as above]."

Gifts in restraint of marriage.

(*d*) As to the validity of gifts during widowhood, and generally as to gifts operating in restraint of marriage, see Elph. Introd. Conv. p. 444. In *Re*

The same to woman without anticipation.

II. AND SHL pay, &c., *as above*, to —— durg her life & so that durg coverture, the same shl be for her septe use (*e*), witht power of anticipon.

Life interest in remainder (*f*).

III. AND AFTER the death of the sd —— [death or re-marre of my sd wife, *or as the case may be*] shl pay the income (*g*) of the same trust premes, *or as the case may be*, to ——, if survivg, durg his [her] life [*for septe use, &c., see last form*].

Life interest determinable on bankruptcy, &c. (*h*).

IV. UPON TRUST, that if at the time of my death [*or, if the life intt is in remr*, at the time of this psnt trust takg effect in posson], no act or event shl have happened whby the life intt hby given to the sd K. in the trust premes or any pt thof if belongg to him absolutely wd have become vested in or chged in favour of some other pson or psons or a corporon, then my trees shl pay the income of the sd trust premes (*k*) to the sd K. durg his life or until some such act or event as afsd shl happen.

The same. Short form.

V. AND SHL pay the income (*k*) of the sd trust premes to the sd K. durg his life, unless & until some event shl have happened or shl happen, whby the sd income or any pt thof, if belongg absolutely to him, wd become vested in or chged in favour of some other pson, psons or a corporon.

Nourse, [1899] 1 Ch. 63, it was decided that a condition avoiding a gift on marriage, without consent, in addition to an absolute gift, is valid. A gift on marriage, with the consent of the parents, was held to mean with the consent of the parents, or parent, if any: *Dawson* v. *Oliver-Massey*, 2 Ch. D. 753; but a gift on marriage with the consent of guardians, or guardian, will be construed strictly, *Re Brown*, 18 Ch. D. 63. A clause of forfeiture on change of religion or on marriage with a person of different religion, is valid: *Hodgson* v. *Halford*, 11 Ch. D. 959; *Re Knox*, 23 L. R. Ir. 543. A gift of income to a married woman so long as she should live apart from her husband was held void in *Re Moore*, 39 Ch. D. 116, where the distinction between gifts on condition and gifts by way of limitation is discussed.

Other causes of forfeiture.

(*e*) See above, p. 466, note.

(*f*) A gift to the husband or wife of the first life-tenant would not, it is conceived, operate in case of a divorce (*Re Morrieson*, 40 Ch. D. 30). *Bullmore* v. *Wynter*, 22 Ch. D. 619, appears to be a doubtful decision, and should not be relied on.

(*g*) See note (*c*) on last page.

(*h*) As to trusts of this nature, see p. 469, note. Compare the forms in the case of annuities, above, pp. 721 *et seq.* See variation, p. 469, note (*d*).

(*k*) For the variations for real estate, or a mixed fund of realty and personalty, see last page, note (*c*), and make corresponding alterations throughout the form.

Discretionary trust for application of income after forfeiture for benefit of life tenant and his family, &c. (*a*).

VI. And, in the event of the trust hinbfe contd for paymt of the sd income to the sd K. determing or failg in his lifetime, my trees shl durg the remr of his life, or durg such shorter period continuous or discontinuous as they shl in their absolute & uncontrolled discron think fit (*b*), pay all or any pt of such income or apply the same for the mtce & psonal support or benefit of all or any one or more to the exclusion of the others or other of the follg objects, namely,

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(*a*) See p. 470, note (*f*); and see the form of protected gift of an annuity to a female, p. 721, form x.

Trust to pay to life tenant after forfeiture or accumulate.

(*b*) A discretion may be given to the trustees after forfeiture either to pay the income to the life tenant or apply it for his benefit (without naming other objects of the trust) or to withhold it and accumulate as long as the law permits; which would be effectual against the life tenant and consequently against his creditors, who cannot have any higher rights (see, as to trusts of this nature, *Re Coleman*, 39 Ch. D. 443, and the cases cited in the argument); in that case the clause may proceed:—"eir pay the sd income to or apply the same for the psonal support or benefit of him the sd K. in such mner as they think fit, or may at any time or times in the like discron withhold all or any pt of such income from him & accumulate the same as an addon to the capl of the sd trust fund, by the investmt thof in any such investmts as are hinafter authorised, with power at any time to change the investmt thof at discron, & so that such accumulons & income thof shl be held upon the same trusts as the origl fund, but my trees shl nevs have power in their absolute discron to pay or apply such accumulons or any pt thof at any time aftwds durg the life of the sd K. to him or for his benefit as if the same had been income of the then current yr: Provd always that in the event of the sd K. survivg me for more than 21 yrs the accumulon of any income wch may be withheld from him under the discronary power hinbfe contd shl after the expiron of such 21 yrs cease, & the income so withheld shl be thenceforth pd or applied by my trees in the same mner as if the sd K. were dead: [Provd always & it is my earnest wish & reqt that my trees shl in the exercise of the discron hinbfe given to them act accdg to what they may consider the best intts of the sd K., & not withhold the sd income from him unless they see good reason, but this expression of my wishes is intd merely for their guidce & not as imposg any legal obligon or fetter on their discron]."

the sd K. & his wife (if any), & his chn or remoter issue for the time being in existce, whether minors or adults, & the other psons or pson for the time being entled to or intted, whether absolutely, contingently, or orwise, in the sd trust premes, or any pt thof, under the trusts hrin contd to take effect after the dece of the sd K., in such proportions & mner as my trees shl in their absolute & uncontrolled discron from time to time think pper, & subjt to the discronary power lastly hinbfe contd, shl, durg such remr of the life of the sd K., hold the sd income or so much thof as shl not be applied under such discronary power, Upon the trusts & for the pposes upon & for wch the sd income wd for the time being be held if the sd K. were then dead.

The same. Short form.

VII. AND IN the event of the failure or determinon durg the life of the sd K. of the trust lastly hinbfe decld in his favour shl, durg the remr of his life, pay or apply all or any pt of the sd income unto or for the psonal support or benefit of the sd K. & his wife & issue (if any) for the time being in existce, & the psons or pson for the time being intted in the sd trust premes under the ulterior trust hinafter decld, or any of such respive objects of the psent discronary trust to the exclusion of the others or other of them, in such shares & mner as my trees shl from time to time in their absolute discron think pper, & subjt to such discronary trust or power shl hold the sd income upon the trusts upon wch the same wd for the time being be held if the sd K. were then dead.

Trust of income after bankruptcy, &c., where the life interest is not protected (*a*).

VIII. AND AFTER the failure or determinon durg the life of the sd K. of the trust hinbfe decld of the sd income in his favour shl durg the remr of his life hold the sd income upon the trusts & for the pposes upon & for wch the same wd for the time being be held if he were dead.

Proviso determining all tenancies for life on bankruptcy &c.

IX. PROVD ALWAYS, & I declare that in case any pson to whom a life intt in the sd trust premes is hinbfe given shl at any time alienate or chge, or affect to alienate or chge, the income of the sd trust premes or any pt thof, or in case by reason of any act or event [*or*, his [or her] bkptcy or any other event] (whether happeng bfe or after such life intt shl come into posson or bfe or after my dece not being merely a

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(*a*) As to this form, see above, p. 472, note (*a*).

consent to the exercise of the power of advancemt hrin contd), the sd income or any pt thof shl or but for this provo wd become vested in or charged in favour of some other pson or psons or a corporon, then the trust hinbfe contd for paymt of the sd income to such pson shl immedly thrupon cease & become void; *if the life este is not to be protected say*, "& my trees shl durg the remr of his [or her] life hold the sd income upon the trusts & for the pposes upon & for wch the same wd for the time being be held if he [or she] were dead;" *if the life intt is to be protected say*, "And in such event my trees may durg the remr of his [or her] life, &c., *discronary trust for applicon of income for benefit of life tenant & his family, &c., as in form* VI."

Life interest to widow charged with maintenance of children (*a*).

X. AND SHL pay the income (*b*) of the sd trust premes to my sd wife durg her life, & so that durg any future coverture the same shl be for her septe use witht power of anticipon, but subjt to the obligon of maintaing & educatg throut such of my chln as shl for the time being be minors & shl not have been married [& maintaing such of my daurs as shl for the time being be adult & spinsters], but witht liability to acct so long as she shl maintain & educate them resply to the satisfon of my trees.

Precatory direction to maintain children.

XI. AND I reqt my sd wife, but not so as to impose any legal obligon upon her, to maintain & educate such of my chln as shl for the time being be minors & unmarried, & to make pper annl or other allowces to such of my chln as shl for the time being have attned the age of twenty-one yrs & shl in her opinion require the same.

Tenancy in common to several for life, with trust of capital for last survivor.

XII. AND SHL pay the [net rents, profits, &] income of the sd trust premes to ——, ——, & —— & the survors of them durg their respive lives in eql shares as tenants in common, & subjt thto, shl stand [seised &] possed of the sd trust premes, in trust for the last survor of them the sd ——, ——, & —— & the [hrs], exs, ads & assns of such last survor absolutely.

(*a*) See p. 473, form XXVIII., for the full form, which can readily be adapted to a will.

(*b*) For variations for real estate or a mixed fund, see above, p. 740, note (*c*).

TRUSTS FOR CHILDREN AND ISSUE (*c*).

Trust for testator's children or remoter issue as widow shall appoint (*d*).

I. IN TRUST for all, or such one or more exclusively of the others or other, of my chln, or remoter issue, such remoter issue to be born & take vested intts within 21 yrs after the death of my sd wife (*e*), at such age or time, or respive ages or times, if more than one in such shares & with such future or other trusts for their respive benefit, & such provons for their respive advancemt, eir in the lifetime of my sd wife or after her death, & mtce & educon, at the discron of my trees or any other pson or psons, & in such mner in all respts as my sd wife shl from time to time by any deed or deeds, revocable or irrevocable, or by will or codl appt (*f*), AND IN DEFAULT of & subjt to any such apptmt as afsd, &c.

Trust for children or issue of tenant for life as he shall appoint.

Variations where the power is given to two tenants for life and the survivor (*g*).

II. IN TRUST for all, or such one or more exclusively of the others or other, of the chln or remoter issue of the sd ——, such remoter issue to be born & take vested intt within 21 yrs after his death [the death of the survor of the sd —— & ——] (*e*), at such age or time, or respive ages or times, if more than one in such shares, & with such future or other trusts for their benefit & such provons for their respive advancemt, eir in the lifetime or after the death of the sd —— [& ——], & mtce & educon, at the discron of my trees or

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(*c*) See p. 740, note (*c*).

(*d*) As to the frame of the power of appointment, see pp. 474, 475, notes. For a power excluding a child taking an estate, see *infra*, form XXII.

(*e*) For real estate add here, "for such estes or este, intts or intt."

Proviso where wife's life interest is determinable on her marrying again.

(*f*) If the widow's life interest is determinable on her marrying again, add if so intended, "PROVD ALWAYS, that in the event of my sd wife marrying again, the power lastly hinbfe contd shl thenceforth cease to be exerciseable, but witht prejudice to any previous exercise thof by deed." There might be a question as to the effect of this where there has been a previous revocable appointment. If in the same event the power of appointment is to continue, the following proviso may be added if desired: "PROVD ALWAYS that in the event of my sd wife marrying again the power lastly hinbfe contd shl not be exercised by her after such marre so as to diminish the share to wch any child of mine shl at the date of such apptmt have become entled in posson in default of apptmt." Compare form XXXII., p. 475.

(*g*) For additions to this power where the interest of the tenant for life is determinable on bankruptcy, &c., see pp. 475, 538.

any other pson or psons, & in such mner in all respts as the sd —— shl by any deed or deeds, revocable or irrevocable, or by will or codl appt, AND IN DEFAULT of & subjt to any such apptmt, &c., [*or*, as the sd —— & —— shl by any deed or deeds, revocable or irrevocable, jtly appt, & in default of & subjt to any such jt apptmt as the survor of them the sd —— & —— shl after the dece of the one first dying, in like mner, or by will or codl appt, AND IN DEFAULT of & subjt to any apptmt under the respive powers lastly hinbfe contd, &c.].

Trust for children or issue as widow or tenant for life shall appoint.

Short form (*a*).

III. IN TRUST for all, or any, to the exclusion of the others or other, of my chln or remoter issue, [the chln or remoter issue of the sd ——,] if more than one in such shares, & in such mner in all respts as my sd wife [as the sd ——] shl by deed revocable or irrevocable, or by will or codl appt, AND IN DEFAULT of & subjt to any such appmt, &c.

Trust for children of testator or another person at 21, &c. (*b*).

IV. IN TRUST for all or any, my chln or child, [the chln or child of the sd ——,] who being a son or sons attn (*c*) the age of 21 yrs, or being a daur or daurs attn that age or marry (*d*), if more than one in eql shares.

Trust for testator's children, sons at 21, daughters at 21, or marriage with consent (*e*).

V. IN TRUST for all or any my chln or child, who, being a son or sons attn the age of 21 yrs, or being a daur or daurs attn that age or marry with the consent, if marrying after my death, of her or their gdian or gdians (*d*), if more than one in eql shares.

(*a*) See note (*g*), last page.

(*b*) This form should not be used where the parent is living and does not take a life interest; see form VIII. below for that case. In the case of the testator's children, or those of another *deceased* person, the vesting may be postponed till any later age than twenty-one. For a trust for the children of another *living* person postponing the vesting to a later age, as far as the law will permit, see p. 748, form X.

(*c*) This wording is suitable whether the children are all under age or unmarried, or some are already of age or married; but in the latter case, if thought preferable, say, "have attned or shl attn, &c.," and "have married or shl marry."

Variations for real estate or a mixed fund.

(*d*) For real estate add here, "their, his, or her hrs & assns," for a mixed fund of real and personal estate, "their, his, or her hrs, exs, ads, & assns, resply." The addition of these words, though common, is of course not essential, even in the case of real estate (see the Wills Act, s. 28).

As to marriage with consent.

(*e*) See *ante*, p. 741. Under a trust in this form a daughter, although marrying without consent, would, if she afterwards attains twenty-one, become entitled. If it is the intention that a daughter so marrying should be absolutely excluded, the next form should be used.

VI. IN TRUST for all or any, my chln or child, who, being a son or sons, attn the age of 21 yrs, or being a daur or daurs attn that age or marry in my lifetime, or attn that age after my death witht havg prevsly married, or marry after my death under that age with the consent of her or their gdian or gdians (*f*), if more than one in eql shares.

Trust for testator's children excluding daughters marrying under age without consent.

VII. IN TRUST for all, or any, my chln, or chld, [the chln or child, of the sd ——,] (*f*), if more than one in eql shares.

Trust for children to vest immediately (*g*).

VIII. IN TRUST for all or any the chln or child of ——, who shl be livg at my dece, or born at any time aftwds bfe any one of such chln for the time being in existce attns a vested intt (*h*), & who, being a son or sons attn the age of 21 yrs, or being a daur or daurs attn that age or marry (*f*), if more than one in eql shares.

Trust for children of another living person who takes no life estate.

Trust for children where parent takes no life interest.

(*f*) See note (*d*) last page.

(*g*) This form is adapted to the case where the children are all adult, otherwise form IV. should be used. An immediate trust in this form for the children of another living person would include only those living at the death of the testator, provided there were any such children then in existence; but if the gift is in remainder, children born after the testator's death, and before the period of distribution, would share; see Elph. Introd. 447.

(*h*) In the case of a trust of a capital fund for the children who attain twenty-one, &c., the parent being living, but taking no life interest, the period for ascertaining the class is, by a rule of convenience, to prevent the distribution being kept in suspense, the time when the first of the class by attaining a vested interest becomes entitled to payment, and children coming into *esse* after that time are excluded (Elph. Introd. 448, 449); but it is better to express this (if so intended) as in the text. Where there is a trust for accumulation the children born during the continuance of that trust and attaining twenty-one, &c., will be entitled (*Watson* v. *Young*, 28 Ch. D. 436). But the rule does not apply to a gift of income only (*Re Wenmoth*, 37 Ch. D. 266, and see *Re Bedson*, 28 Ch. D. 523); nor to real estate given specifically and without a trust for conversion, *Blackman* v. *Fysh*, [1892] 3 Ch. 209. The trust in the text might be extended to all children born before the *youngest* child for the time being *in esse* attains a vested interest, but this would prevent a child who has attained a vested interest from receiving his share until all the younger children have attained vested interests or the death of the parent. If it is desired to extend the gift to all children, the following words may be substituted, "who shl be livg at my dece, or born at any time aftwds durg the life of the sd —— or after his dece." As in that case the fund will not be distributable till the death of the parent, provision should be made for the payment of the income in the meantime to the children who have attained vested interests, or their representatives, or for the benefit of the minor children. As to the right in the absence of express provision to the income of contingent gifts of residue, see 37 Sol. J. 263, 281, and of legacies, 35 Sol. J. 149, 238, and of real estate not given on trust for conversion, *Re Averill*, [1898] 1 Ch. 523.

Trust for children of tenant for life at 21, &c., effected by means of survivorship and accruer clause (*a*).

IX. IN TRUST, if there shl be but one child of the sd ——, for such one child (*b*): AND IF there shl be two or more chln of the sd ——, then IN TRUST for such two or more chln in eql shares: PROVD ALWAYS, & I declare that if there shl be more than one child of the sd ——, & any of them being a son or sons shl die under the age of 21 yrs, or being a daur or daurs shl die under that age & witht havg been married, then as well the origl share intd to be hby provd for as the share or shares by virtue of this psnt clause or provo accrug to each such son or daur so dying as afsd, [or so much thof as shl not have been applied or disposed of for the advancemt of any such child under the power for that ppose hinafter contd,] shl from time to time go, accrue, & belong to the others or other of such chln, & so far as circes will admit shl vest in them, him, or her, if more than one in eql shares, at such & the same time or times & in such & the same mner as is hinbfe provd concerng their, his, or her origl shares or share; PROVD ALSO, & I further declare that if there shl be no child of the sd ——, or if there shl be one or more such child or chln, but such child if only one, or all such chln if more than one, shl being a son or sons die under the age of 21 yrs, or being a daur or daurs die under that age & witht havg been married, then my trees shl hold the same trust premes, or so much thof as shl not have been applied or disposed of for the advancemt of any such child or chln under the afsd power, IN TRUST, &c.

Trust for children of another living person, postponing the vesting to 25.

X. IN TRUST for all or any, the chln or child of the sd X. who shl be living at my death, or born at any time aftwds, & who being a son or sons, attn the age of 25 yrs bfe the expiron of 21 yrs from the death of the survor of me & the sd X., or being a daur or daurs, attn the age of 25 yrs or marry bfe the expiron of such 21 yrs, or (whether sons or daurs) shl be livg at the expiron of such 21 yrs (*c*), if more than one in eql shares.

(*a*) This form of trust, which was formerly common, is now seldom used, being superseded in practice by form IV. above, but it may occasionally be found useful.

Variations for real estate or a mixed fund.

(*b*) For real estate, add here, "his or her hrs & assns," for a mixed fund of realty and personalty, "his or her hrs, exs, ads, & assns resply;" and make corresponding alterations in the rest of the form.

As to rule

(*c*) As this gift is extended to children born after the testator's death, it is restricted so as to keep within the rule against perpetuities. In the absence of

Clause postponing vesting of grandsons' shares to the age of 25, if not too remote (*d*).

XI. PROVD ALWAYS, & I declare that if any grandson of mine shl or wd if livg, attn the age of 25 yrs bfe the expiron of 21 yrs, computed from the time of the dece of the last survor of my chln & more remote issue (if any) livg at my death, then the vestg of the share of each such grandson in the sd trust premes shl be postponed until the attnmt by such grandson of the age of 25 yrs.

Trust for children of testator at 21, &c., against perpetuities.

XII. IN TRUST for all or any, my chln or child, who shl be livg at my dece, & being a son or sons attn the age of 21 yrs, or die under that age leavg issue, or being a daur or daurs attn

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such an express restriction, the rule appears to be that where the share of each person is ascertained, the gifts to those who happen to be within the limits of the rule against perpetuities may be good as to them (regard being had to the actual state of the family at the testator's death), though the gifts be invalid as to the others who are beyond that limit, because the number and amount of the shares are ascertained at the proper period and within the proper limit of time (*Wilkinson* v. *Duncan*, 30 Beav. 111, followed in *Von Brockdorff* v. *Malcolm*, 30 Ch. D. 172; and see *Re Coppard*, 35 Ch. D. 350); but that where the vice of remoteness may possibly (according to the state of facts existing at the testator's death) affect an unascertained number of members of the class, so as to affect the class as a whole, it invalidates the whole gift (*Pearks* v. *Moseley*, 5 App. Cas. 714; *Re Mervin*, [1891] 3 Ch. 197).

If the parent does not take a life interest this trust may be restricted, as in form VIII., to children born before any child (or if preferred before the youngest child for the time being *in esse*) attains a vested interest. For variations for real estate or a mixed fund, see last page.

(*d*) See last note. In cases where the vesting of the shares of the children of any person other than the testator is postponed till after the age of twenty-one, it may sometimes be convenient to define the terms "majority," and "minority," &c., as in the following form, and to use the phrase, "chln or child attaing majority," instead of "chln or child who being a son, &c."; but considerable care is necessary in the use of definitions giving to words a sense different from their ordinary meaning.

Special definition of majority and minority.

"I DECLARE that the expression, 'majority,' as used in this my will, when applied to a male born in my lifetime shl mean his attaing the age of twenty-five yrs, & when applied to a male born after my death shl mean his attaing the age of twenty-one yrs, & when applied to a female born in my lifetime shl mean her attaing the age of twenty-five yrs or marrg, & when applied to a female born after my death shl mean her attaing the age of twenty-one yrs or marrg. And that the expressions 'minority' & 'minor,' as used in this my will, shall have a meang correspondg to the expression 'majority.'"

including those dying in his lifetime leaving issue (*a*).

that age or marry, & any child or chln of mine who may have died in my lifetime (whether bfe or after the date of this my will) leavg issue livg at my death (*b*), if more than one in eql shares, & so that the share hby expd to be given to any such deced child as afsd shl vest in his or her repves as pt of his or her psonal este in the same mner as the same wd have done if he or she had survived me & died immedly after me, havg attned a vested intt.

The same for children of another person (*c*).

XIII. IN TRUST for all or any, the chln or child of the sd X., who shl be livg at my dece or born aftwds & being a son or sons, attn the age of 21 yrs or die under that age leavg issue,

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Mode of providing for a child predeceasing the testator leaving issue.

(*a*) This form operates according to the 33rd section of the Wills Act in making the share of a child dying before the testator leaving issue part of his or her estate. Without this express provision such a child would be excluded, as the 33rd section of the Wills Act is prevented from applying to gifts to a class by the rule of construction that such a gift includes only those members of the class who survive the testator (*Ive* v. *King*, 16 Beav. 53; *Re Hannam*, [1897] 2 Ch. 39), even though the class should in fact consist of but one individual (*Re Harvey*, [1893] 1 Ch. 567). The words declaratory of the intention that the share of a deceased child shall go to his or her representatives should be inserted though they appear to be unnecessary having regard to the Wills Act, s. 33. The vesting in this case may of course be postponed to any later age than twenty-one: see above p. 746, note (*b*); but it may be proper that such restriction should not apply to deceased children. As the effect of the clause in the text is to make the share of a deceased child part of his estate so as to be subject to his debts (see p. 709, note), and so as possibly in the case a daughter to carry her share to her husband, it may be better to provide this case by giving the share of a deceased child to the issue as in form XVII. It is also generally better and more convenient to provide for the event of a child predeceasing the testator leaving issue, by a separate clause, as in forms XV. and XX. It may be added that the numerous reported instances of miscarriage on the part of testators in the endeavour to provide for the issue of children predeceasing them (in many of which the adherence to the strict letter of the will or the application of technical rules of construction has defeated the evident and plainly expressed intention of the testator) show the need for considerable care on the part of the draftsman in framing such dispositions.

Variations for real estate or a mixed fund.

(*b*) For real estate add here, "their, his, or her hrs, & assns," and afterwards say, "shl devolve upon & vest in his or her hrs or devisees as part of his or her real este." For a mixed fund of real and personal estate, add here, "their, his, or her hrs, exs, ads, & assns, resply," and afterwards say, "shl devolve upon & vest in his or her hrs, devisees, exs or ads, resply as pt of his or her real & psonal este."

(*c*) As to the necessity for an express gift in this case of the share of a deceased child to his or her representatives so as to prevent lapse, the case or being a daur or daurs attain that age or marry, & any child or chln of the sd X. who may have died in my lifetime, &c., *as in last form.*

Trust for children of another living person who attain 25, &c., and those dying before the testator leaving issue (*d*).

XIV. IN TRUST for all, or any, the chln or child of the sd X., who shl be livg at my dece or born at any time aftwds, & who shl be livg at the expiron of 21 yrs from the death of the survor of me & the sd X., or shl within such 21 yrs attn the age of 25 yrs or die under that age leavg issue, & any child or chln of the sd X. who may have died in my lifetime (whether bfe or after the date of this my will), leavg issue livg at my dece, if more than one in eql shares, & so that the share hby expd to be given to any such deced child as afsd, shl vest in his or her repves, as pt of his or her psonal este, in the same mner as if he or she had survived me & died immedly after me, havg attned a vested intt as afsd.

Proviso giving share of child predeceasing testator to its representatives (*e*).

XV. PROVD ALWAYS & I declare that if any child of mine [of the sd ——] shl have died in my lifetime (whether bfe or after the date of this my will), leavg issue livg at my death, the share in the sd residy este & trust premes wch such child wd have taken if he or she had survived me [& attned a vested intt] shl be held in trust for his or her psonal repves, as pt of his or her psonal este.

Clause against lapse in gift of residue real and personal (*f*).

XVI. *Genl devise & beqt of real & psonal este to A.* AND I DECLARE that in the event of the sd A. dying in my lifetime, whether leavg issue or not, the devise & beqt of my residy real & psonal este hinbfe made in his favour shl not lapse, but that such residy este shl in that event devolve upon & vest in his hrs, exs, ads, or devisees resply, accdg to the nature of the ppty, as pt of his real & psonal este resply, in the same mner as if he had survived me & died immedly after me.

Trust for testator's children,

XVII. IN TRUST for all or any, my chln or child livg at my death, & the chln or child then livg of any then deced child of

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not being within the 33rd section of the Wills Act, see *In re Coleman*, 4 Ch. D. 165. This form is not to be used where the parent is living but does not take a life interest. In that case the form should be modified as above, p. 747, form VIII.

(*d*) See the last note, and above, p. 748, note (*c*). For variations for real estate or a mixed fund, see above, note (*b*).

(*e*) See last page, note (*c*).

(*f*) See p. 750, note. This clause differs from the last in providing against lapse, whether the devisee leaves issue or not.

and children of deceased children, at 21, &c. (*a*).

mine, who being male attn the age of 21 yrs (*b*) or being female attn that age or marry (*c*), if more than one as tenants in common in eql shares, but so that the chln of any deced child of mine shl take eqlly betn them as tenants in common (*d*), only the share wch their parent wd have taken had he or she survived me & attned a vested intt (*e*).

Immediate trust for children of another person and children of deceased children, at 21, &c. (*f*).

XVIII. IN TRUST for all or any, the chln or child livg at my death of ——, & the chln or child then livg of any then deced child of his, who being male attn the age of 21 yrs (*b*), or being female attn that age or marry (*c*), if more than one in eql shares, but so that the chln of any deced child of his shl take eqlly betn them only the share wch their parent wd have taken had he or she survived me & attned a vested intt.

Trust for children who survive tenant for life, and children of

XIX. IN TRUST for all or any, my chln or child, [the chln or child of the sd ——,] livg at the death of the survor of myself & my sd wife [of the sd —— & ——] & the chln or child then livg of any then deced child of mine [of the sd ——] who being male attn the age of 21 yrs (*b*), or being female attn that age

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As to rule against perpetuities.

(*a*) See the form of a separate clause substituting issue of deceased children below, form XX. The vesting in this case both as to children and grandchildren can be postponed to a later age than twenty-one, as the objects must be *in esse* at the testator's death. In trusts of this kind the rule against perpetuities should be carefully borne in mind; and gifts to remote issue of the testator, or to the issue of a stranger, especially if the vesting is postponed to a later age than twenty-one, must be restricted accordingly; see *Re Dawson*, 39 Ch. D. 155; *Re Whitten*, W. N. 1890, 45; 62 L. T. 391.

(*b*) If it be desired, for the sake of consistency, to prevent the exclusion of a son who survives the testator and afterwards dies under age, leaving issue, add here, "or die under that age leavg issue."

(*c*) For variations for real estate or a mixed fund, see above, p. 750, note (*b*).

(*d*) Care should be taken to insert words of severance as to the shares both of the testator's children and of the children of a deceased child, to create a tenancy in common in both cases instead of a joint tenancy; see *Re Yates*, [1891] 3 Ch. 53.

As to giving share of deceased child to issue.

(*e*) This is the proper way of describing the share of a child dying before the testator. See *Hunter* v. *Cheshire*, L. R. 8 Ch. 751. The expression "the parents' share" is incorrect: see *Re Smith's Trusts*, 5 Ch. D. 497, n.; *West* v. *Orr*, 8 Ch. D. 60. It is conceived that a trust in the above form would obviate the difficulty raised in *Re Chinery*, 39 Ch. D. 614, and *Re Musther*, 43 Ch. D. 569, where (under the terms of the particular will) a child of a child who died before the date of the will was excluded.

(*f*) For a proviso substituting issue, see form XX. The vesting can be postponed to a later age.

or marry (*h*), if more than one in eql shares, but so that, &c., *as in last form, mutatis mutandis.*

deceased children, at 21, &c. (*g*).

Proviso substituting issue for child of testator predeceasing him (*i*).

XX. Provd always, & I declare that if any child of mine shl have died in my lifetime (whether bfe or after the date of this my will) leavg issue livg at my death, such issue being male & attaing the age of 21 yrs, or being female & attaing that age or marryg, shl take by substiton, if more than one in eql shares, the share in the trust premes wch such deced child of mine wd have taken under the trusts in that behalf hinbfe decld had he or she survived me & attned a vested intt (*k*), [but so that no issue remoter than a child of such deced child shl take, except in the case of the death in my lifetime of his, her, or their parent, & in the place of such parent (*l*)].

Proviso substituting

XXI. Provd always, & I declare that if any child of the sd X. shl have died in my lifetime, or in the lifetime of the sd X.

As to trust in remainder being contingent on survivorship.

(*g*) This form of trust making the interests of the childen dependent on their being alive at the time of the trust in their favour taking effect in possession (though the draftsman is frequently instructed to adopt it) is not in general so convenient or expedient as the common form giving children who attain twenty-one, &c., vested interests, whether they survive the tenant or tenants for life or not; and a series of trusts of this description making the interests of the remaindermen contingent in each case, on survivorship, is often very troublesome to frame.

Rule against perpetuities.

There is also sometimes a risk of miscarriage in the case of a trust making the interests of the remaindermen contingent on their surviving the period of distribution; thus in the case of a trust for A. for life with remainder to any wife whom he may marry for life, a gift in remainder to the children of A., who may be *living at the death of the survivor* of him and his wife, is too remote, as the wife may not be born till after the testator's death; see *Re Harvey*, 39 Ch. D. 289. So also, although life interests may be given to persons unborn at the testator's death, if they must necessarily come into *esse* within the limits of time imposed by the rule (*e.g.*, to the issue of a person living at the testator's death), care must be taken that the remainders following on such life interests to unborn persons are not too remote; thus if the ultimate trust of the fund, or a power of appointment over it, were limited to the last survivor of such unborn tenants for life, this would be bad, as the ultimate limitation might remain in contingency beyond the perpetuity limits, and is not saved from failure by the circumstance that the ultimate taker must be one of certain persons who are ascertained within those limits, and could join in alienating the property; *Re Hargreaves*, 43 Ch. D. 401, overruling *Avern* v. *Lloyd*, L. R. Eq. 383. As to perpetuity in appointments and as to limitations of real estate after limitations to unborn persons for life, see *ante*, Vol. I., p. 69, note.

(*h*) See p. 752, note (*c*).

(*i*) This form can readily be adapted to the case of an immediate gift to the children of another person.

(*k*) See p. 752, note (*c*).

(*l*) The part here bracketed may generally be omitted.

issue for child of tenant for life predeceasing him.

leavg issue livg at the death of the survor of myself & the sd X., such issue being male & attaing the age of 21 yrs, or being female & attaing that age or marrying, shl take by substiton if more than one in eql shares, the share in the sd trust premes wch such deced child of the sd X. wd have taken under the trusts in that behalf hinbfe decld had he or she survived me & the sd X., & attned a vested intt [but no remoter issue than a child of such deced child shl take, except in the case of the death of his, her, or their parent bfe the death of the survor of myself & the sd X., & in the place of such parent (*a*)].

Trust for issue of tenant for life excluding eldest child taking estate

XXII. In trust for all, or such one or more exclusively of the others or other, of the chln or remoter issue of the sd, *tenant for life*, (such remoter issue to be born & take vested intts within 21 yrs after the death of the survor of myself & the sd ——,) other than (*b*) & except the first or only son, or any other son or sons, who bfe his or their resply attaing the age of 21 yrs shl become [indefeasibly (*c*)] entled, or any daur or daurs, who bfe her or their resply attaing that age or marrying shl become indefeasibly (*c*) entled to the first este in tail [male or in tail], eir in posson or remr, under an indre, dated, &c., *or*, "the will of, &c.," at such age or time, &c., *as in form* II., p. 745. And in default of & subjt to any such apptmt in trust for all or any the chln or child of the sd ——, other than & except as afsd, who being a son, &c., *as in form* IV., p. 746: And if there shl be no child, other than & except as afsd, of the sd ——, who being a son shl attn the age of 21 yrs, or being a daur shl attn that age or marry, then in trust for such one or more of the sd excepted (*d*) chln of the sd ——, as being a son or sons attn, &c., *as in form* IV. (*e*).

Trust for children where a

XXIII. In trust for all or any my chln or child, who being a son or sons attn the age of 21 yrs, or being a daur or daurs attn

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(*a*) The part here bracketed may generally be omitted,

(*b*) For variations where a child succeeding to a peerage or baronetcy or a Scotch entail is to be excluded, see p. 476, and where there is a shifting clause, p. 594, note.

(*c*) See above, p. 476, note (*c*).

(*d*) When the son succeeding to a peerage, &c., is excluded, say, "excepted son or sons of the sd —— as shl attn the age of 21 yrs, if more than one in eql shares."

(*e*) This form is so framed as to avoid the question raised in *Locke* v. *Dunlop*, 39 Ch. D. 387.

that age or marry, & if more than one in eql shares, except that the eldest, or only, such son shl take a double share [*or*, except that each son shl take double the share of each daur], [*or*, but so that the share of my son ——, in case he attns the age of 21 yrs, shl not be less [more] than £——, exclusive of any accumulons wch may be added thto durg his minority].

double share is given to the eldest son or every son, or a minimum or maximum sum is given to one son.

XXIV. UPON TRUST to pay or transfer the sum of £——, or stks, funds, or secs of equivalent value to my son —— in case & when he attns the age of 21 yrs, & to pay or transfer the sum of £——, or stks, funds, or secs of equivalent value to my daur ——, in case, & when she attns that age or marries, & as to all the residue of the sd trust premes in trust, &c., *for all the chln,* "includg the sd —— & ——," *at* 21, *&c., form* IV.

Trust for children unequally.

XXV. PROVD ALWAYS, & I declare that no child of mine [of the sd ——], who [or whose issue] shl take any pt of the sd trust premes under any apptmt by virtue of the power [eir of the powers] hinbfe contd, shl in default of apptmt to the contrary be entled to any share of the unappted pt thof witht bringg the share or shares or intt appted to him or her [or to his or her issue] into hotchpot, & acctg for the same accdly (*g*).

Hotchpot clause (*f*).

XXVI. PROVD that any share appted to a child [or his or her issue] under the power hinbfe contd shl in default of apptmt to the contrary be brought into hotchpot by such child in the divon of the unappted pt of the sd trust premes.

The like. Short form.

XXVII. PROVD ALWAYS that if any daur of mine wd but for this psnt provo become entled [eir by apptmt, or in default of apptmt, or ptly in one way & ptly in the other], to any share or shares in the sd trust premes wch [eir alone or togr with

Proviso restricting total amount of shares of daughters.

(*f*) Where the children of a child dying before the testator take his share by substitution, say, "that no child of mine [of the sd ——] who or whose issue, & that no grandchild of mine [of the sd ——], who or whose parent shl take, &c.," as in the text, "witht bringg the share or shares or intt appted to him or her or his or her parent or issue into hotchpot, &c." Where the representatives of a child dying before the testator take his share by substitution, say, "that if any child of mine [of the sd ——] shl take, &c.," "neir such child nor his or her repves shl in default, &c.," "intt appted to such child into hotchpot, &c."

Variations in hotchpot clause.

(*g*) For an addition to the hotchpot clause providing for the valuation of the trust property or any appointed interest therein, see form XXXI.

the share or shares to wch she shl become entled by apptmt, or in default of apptmt, or ptly in one way & ptly in the other, in the ppty subjt to the trusts of my marre settlemt, dated, &c.], shl exceed in value the sum of £—— then unless the contrary shl be directed in any apptmt under the power hinbfe contd, she shl not be entled to a larger share in my residuary este than the sum of £——, [or such smaller sum as shl togr with her share or shares in the ppty subjt to the trusts of the sd settlemt make up the sd sum of £——] with intt on the sd sum of £——, [or such smaller sum as afsd,] at the rate of —— p c. p.a., from the death of the survor of myself & my sd wife, [& the residue of her share or shares in the sd trust premes shl be applied & disposed of as if such daur had died bfe me witht leavg issue] (*a*).

Clause directing sums taken under marriage settlement to be brought into hotchpot.

XXVIII. PROVD ALWAYS, & I declare that the share or shares (if any) of the trust funds or ppty comprd in or subjt to the trusts of an indre of settlemt, dated, &c., made on my marre, to which any child of mine [or the issue of such child, or any of such issue,] shl become entled by apptmt, or in default of apptmt, shl, [in default of apptmt to the contrary made by my sd wife after my death] after deductg all duties payable on my death or that of my wife in respt of such share or shares be brought into acct in the way of hotchpot as agst such child [or his or her issue] in the divon of the sd trust premes representg my residy este, in the same mner as if the same formed pt of such residy este to the intent that in the genl divon of my este, & the trust ppty comprd in the sd settlemt, there shl be an equality betn my chln, [except that the shares of my sons shl be double those of my daurs as afsd] (*b*), & I direct that any

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(*a*) It should be provided in this case (as in form XXIII.), whether accumulations during minority are to go in increase of the total amount of the daughters' shares, or to accrue to the other children.

As to satisfaction of legacies by portions and *vice versa.*

(*b*) For a clause in a settlement directing that a legacy shall not be deemed to be in satisfaction of a portion, see *ante*, p. 551. It must be borne in mind that where a parent or person *in loco parentis* gives a legacy to a child and afterwards advances the legatee by way of portion, the presumption of equity, which leans strongly against double portions, is that the portion was intended as a satisfaction of the legacy for the whole or in part according to value; and on the other hand, a legacy given by a parent or person *in loco parentis* to a child, will be presumed to be a satisfaction complete or *pro tanto* of a portion previously secured to the legatee by the testator. As to what is sufficient to rebut these presumptions and generally on this subject, see W. & T. L. Cas. Eq.,

& every question whether as to the values or orwise wch may arise resptg the mode of givg effect to the provon as to hotchpot hinbfe contd, shl be determined by my trees so as conclusively to bind all persons intted under this my will.

Advances made to children by testator in his lifetime to be brought into hotchpot (c).

XXIX. PROVD ALWAYS & I declare that all sums of moy or ppty wch I have given, or covted or agrd to give, or wch I may hrafter give, or covt or agree to give, to or with any child of mine on his or her marre, or orwise for his or her advancemt or establishmt in life, shl in default of any diron to the contrary in writg under my hand be taken in or towards satisfon of the

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As to interest on advances by way of loan.

notes to *Ex parte Pye* and *Montagu* v. *Earl of Sandwich*, 32 Ch. D. 525; *Re Vickers*, 37 Ch. D. 525. The intention as to these matters should be expressed.

Revresions to be brought into hotchpot.

(c) As to the construction of this clause see *Re Cosier*, [1897] 1 Ch. 325; *Re Lambert*, [1897] 2 Ch. 169. If the money covenanted to be paid by the testator may be payable after his death it may be convenient (so as to avoid the rule that reversionary interests directed to be brought into hotchpot must be valued (*Eales* v. *Drake*, 1 Ch. D. 217)) to add the words following, "Provd that if any moy hby directed to be brought into hotchpot shl be payable after my death it shl not be brought into hotchpot till it shl be actually payable, & my trees may make such arrangemts as they may think fit for carryg the sd provons as to hotchpot into effect eir by payg the whole of such share to such child [or to his or her issue takg by substiton as afsd] & takg a bond or covt from such child [or such issue] for refundg the sd share or any pt or pts thof in such mner & at such time or times as will satisfy the sd provons as to hotchpot or by retaing the whole or such pt as in their discron they may think fit of such share & investg the same & from time to time as & when any moy hby directed to be brought into hotchpot shl become payable sellg a sufft pt of the sd investmts & applyg the proceeds in carryg the sd provons as to hotchpot into effect. Provd also & I declare that the interim income of such investmts shl be pd to the child [or issue] from whose share such investmts shl be made & further that if at the time when such retainer shl be made the amt retained shl be sufft to satisfy the sd provons as to hotchpot, & if for any reason the proceeds of the investmts thof shl be insufft to satisfy such provons no further pt of the share of such child [or issue] shl be brought into hotchpot, & if the sd investmts or the proceeds thof shl be more than sufft to satisfy the sd provons as to hotchpot & the costs of carryg them out the surplus shl revert to & form pt of the share from wch it proceeded."

share of such child [or his or her issue takg by substiton as afsd] in the sd trust premes, & shl be brought into hotchpot & accted for accdly.

Provision for debtor bringing advances into hotchpot when his share is settled (*a*).

XXX. PROVD ALWAYS & I declare that the sums, amtg to £——, wch I have advanced by way of loan to my sd son A., & any other sum or sums wch I may hrafter advance to him, or for his benefit, or so much thof as may be owing to me at my dece, & the intt thron, shl not be chged or claimed as a debt owing to me from him or his repves, but every such sum (whether legally constitutg a debt or not), with intt thron from my dece at the rate of —— p.c. p.a. (but not any intt thron prior to my dece), shl be brought into acct in the way of hotchpot in the divon of my residuary este as agst the sd A. & his wife & chln, or other the pson or psons intted in his share of my residuary este under the trusts hinbfe decld.

Addition to hotchpot and advancement clauses. providing for valuation of land, &c.

XXXI. AND I DECLARE that for the ppose of givg effect to the provons as to hotchpot & advancemt hrin contd, the sd trust premes, or any pt or pts thof, or any intt thrin wch may be appted as afsd, shl, as far as may be necy, be valued [(in default of any diron or provon in that behalf contd in any such apptmt as afsd)], in such mner & at such respive times as my trees shl consider fair & pper, & such valuon shl be conclusive.

SETTLEMENT OF CHILDREN'S SHARES (*b*).

Commencement of trusts of daughters'

I. [*Trust of residuary or specific fund for chln as a class or nominatim, see above,* pp. 745 *et seq.*] PROVD ALWAYS & I declare that the share of the sd trust premes wch is hinbfe

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(*a*) See as to this, 4 Dav. Prec., p. 157, note xli. As to a mistake in the will with regard to the amount of advances, see *Re Taylor's Estate*, 22 Ch. D. 495; *Re Wood*, 32 Ch. D. 517.

Settlement estate duty.

(*b*) See above, p. 740, note (*b*). If the primary trust is for sons attaining twenty-one and daughters attaining that age or marrying and the daughters' shares are settled, the presumptive share of an infant son, or such part thereof as would if he died under twenty-one pass to a daughter, is liable to settlement estate duty, *Att.-Gen.* v. *Fairley*, [1897] 1 Q. B. 698, but if he attains twenty-one the duty will be repaid, Finance Act, 1898 (61 & 62 Vict. c. 10, s. 14).

or children's shares.

expd to be given (*c*) to each daur [child] of mine (*d*) shl not vest absolutely in such daur [child], but shl be retained by my trees & held by them upon the trusts hinafter decld concerng the same resply (that is to say), &c. (*e*).

The same. Another form.

II. AND I DECLARE that my trees shl [after the dece of my sd wife] divide the sd trust premes into —— eql shares, & shl hold such respive shares upon the trusts hinafter decld concerng the same resply, that is to say, as to one of such —— shares, my trees shl, &c., *trust for investmt, if necy, & ulterior trusts,* & as to —— others of such —— shares, my trees shl, &c.

The same. Another form.

III. AND I DECLARE that my trees shl [after the dece of my sd wife] divide the sd trust premes into as many eql shares as I shl have chln who shl survive me or shl have died in my lifetime leavg issue survivg me, & shl appropriate one of such shares to each such child who shl survive me or shl have died leavg issue as afsd (& so that any reference hinafter contd to the shares of my respive chln in the sd trust premes shl be deemed

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As to event of children predeceasing testator.

(*c*) It should be remembered that where the primary trust is for the children as a class or *nominatim*, a child predeceasing the testator would in the former case, unless express provision to the contrary is made, be excluded, whether leaving issue or not (see p. 750, note); and in the latter case, although if the child leaves issue this would be prevented (if the gift is to a child of the testator) by s. 33 of the Wills Act, if he should leave no issue there would be a lapse of his share, unless it is settled, and one at least of the *cestui que trusts* survives the testator: *Re Pinhorne*, [1894] 2 Ch. 276. Express provision for these events should therefore be made; see forms XVII. and XVIII., *infra*. See also other modes of commencing the trusts in forms II. and III.

(*d*) Where the trusts of each share are declared separately, say, "given to my daur [son] K.," and make corresponding alterations in the remaining trusts.

Variations for trust for investment with consent.

(*e*) In most cases, as where the widow takes a life interest, the trust for investment and varying investments will precede the trust for division among the children; but if not, and the fund consists of money, add here, "upon trust, with the consent in writg of such daur [child], if livg & of full age, & at any other time, at the discron of my trees," *or*, "with the consent in writg of the pson for the time being beneflly entled for his or her life to the income of such share, if of full age, & if there shl be no such pson, at the discron of my trees;" or if the trusts of each share are declared separately, "with the consent in writg of the sd K., if livg & of full age, & at any other time at the discron of my trees," to invest such share in the names [or under the legal control] of my trees, in or upon, &c., *investmts & power to vary, see* pp. 59 *to* 464, *forms* III. *to* IX.

to apply to the shares hinbfe directed to be appropriated to them resply, whether they shl resply survive me or not), but so nevs that such respive shares shl be held by my trees upon the trusts, & subjt to the powers & provons hinafter decld & contd concerng the same resply (that is to say,) my trees shl hold the share appropriated to each daur of mine from & after such divon & approprion as afsd, UPON TRUST, &c.

First life interest to daughter without anticipation.

IV. AND SHL, durg the life of such daur, pay the income (*a*) of her sd share to her (*b*) & so that durg coverture the same shl be for her septe use, witht power of anticipon.

Life interest to child, whether son or daughter (*c*).

V. AND SHL, durg the life of such child, pay the income (*c*) of his or her sd share to him or her, & so that in the case of a daur the same shl durg coverture be for her septe use witht power of anticipon.

Second life interest to any husband or wife.

VI. AND SHL, after the death of such daur [child], pay the income (*c*) of such share to any husbd [wife or husbd] whom she [he or she] may leave survivg durg the life of such husbd [wife or husbd].

Second life interest to present husband or wife.

VII. AND SHL, after the death of my sd daur K., pay the income (*c*) of such share to her husbd the sd L., if survivg, durg his life, [shl after the death of my sd son K., pay the income of such share to his wife the sd L., if survivg durg her life, & so that durg her psnt or any future coverture the same shl be for her septe use, witht power of anticipon].

Power of appointment among children or remoter issue of daughter or child (*d*).

VIII. AND AFTER the death of such daur [child], [*if survivg husbd & wife take life intts, say,* " of such daur & her survivg husbd, if any," *or,* " of such child & his or her survivg wife or husbd, if any,"] shl hold such share & the future income thof upon trust for all or such one or more exclusively of the others or other of the chln or remoter issue of such daur [child], &c., *continue power of apptmt to daur or child, or to both parents or survor,* p. 745, *form* II. *or* p. 746, III., *mutatis mutandis.*

(*a*) For real estate, say, " rents & profits ; " for a mixed fund of real and personal estate, say, " rents, profits, & income."

(*b*) If the daughter may be under age, provision for maintenance, &c., should be made, unless the statutory power is relied on. See *infra*, MAINTENANCE, pp. 772 *et seq.*

(*c*) For forms for life interests determinable on bankruptcy, &c., or protected against creditors, &c., see pp. 469 *et seq.*

(*d*) For additions to power where the interests of the tenants for life are determinable on bankruptcy, &c., see p. 475.

Trust for children in default of appointment.

IX. AND IN DEFAULT of & subjt to any apptmt under the power [eir of the powers] hinbfe contd, in trust for all or any the chln or child of such daur [child] of mine, who shl be livg at my dece or born aftwds, & who being a son or sons attn the age of 21 yrs, or being a daur or daurs attn that age or marry (*e*), & if more than one in eql shares.

Hotchpot clause (*f*).

X. *Hotchpot*, p. 755, *form* XXV., or *form* XXVI., *saying*, "child of such daur [child] of mine, who or whose issue shl take any pt of the share of such daur [child] of mine, under any apptmt &c.," *& see the addon for real este*, p. 758.

Ultimate trust of settled share for testamentary appointees of child.

XI. PROVD ALWAYS, & I declare that in case the trusts hinbfe decld concerng the share of any such daur [child] of mine as afsd shl fail, then, subjt to the trusts, powers, & provons hrin decld & contd [*if the statutory power of mtce is relied on, add*, "or by law vested in my trees,"] concerng the same share, & to every or any exercise of any such powers, my trees shl hold such share & the income (*e*) thof, in trust for such pson or psons, for such pposes, & in such mner in all respts as such daur [child] shl by will or codl appt.

Accruer clause in default of appointment.

XII. AND IN DEFAULT of, & subjt to any such apptmt, I declare that such share & any addonal share or shares wch may accrue or be added thto by virtue of this psnt provo & the income (*e*) thof resply, shl go & accrue by way of addon to the share or shares of my other chln or child in the sd trust premes, if more than one in eql shares & proportions, & so that the share wch shl so accrue & be added to the share of any daur [child] of mine shl be held upon the trusts, & subjt to the powers & provons hrin decld & contd concerng her [his or her] origl share, or as near thto as circes will admit.

Trust in default of appointment for daughter's next of kin excluding a surviving husband (*g*).

XIII. AND IN DEFAULT of & subjt to any such apptmt, IN TRUST for such pson or psons as wd have been entled thto under the statutes for the distribon of the psonal este of intestates at the death of such daur, had she died possed thof intestate domiciled in England & a spinster (*h*), such psons, if more than

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(*e*) For variations for real estate, or a mixed fund, see above, p. 750, note (*b*).

(*f*) For maintenance, accumulation, and advancement clauses, adapted to this case, which would usually follow the hotchpot clause, see p. 772 *et seq*.

(*g*) See also p. 769, form VIII.

(*h*) As to the wording of this, see p. 482, note.

one, to take as tenants in common in the shares in wch they wd have taken under the same statutes.

Power to daughter to appoint life interest to her husband. Variation enabling her to associate him with herself in the power of appointment in favour of children (*a*).

XIV. PROVD ALWAYS, & I declare that it shl be lful for every daur of mine [in case she shl have no child or remoter issue who shl attn a vested intt in her sd share], by deed, exted prior to & in contemplon of marre, or by will or codl, to appt unto or for the benefit of any husbd who may survive her an intt for the term of his life, or any less intt, in the whole or any part of such share, & subjt to any condons or restrons she may think fit, & that, in the event of any such apptmt being made, the intt so appted unto or for the benefit of such survivg husbd shl take effect in precedce of & priority over the trusts & provons hinbfe decld & contd concerng the share of such daur to take effect after her death [& in default of any child or remoter issue of hers attng a vested intt]. [AND I FURTHER empower any such daur by deed exted bfe or after her marre, with the concurrce of her husbd or intd husband, if he be born in my lifetime (*bb*), to modify the power of apptmt hinbfe given to such daur over her sd share in favour of her chln or remoter issue, by makg the same exerciseable as to all or any pt of such share by such daur & her husbd jtly by deed revocable or irrevocable, & in default of & subjt to any such jt apptmt by the survor of such daur & her husbd in like mner or by will or codl].

Trusts of daughter's share of residue declared by reference to a share already settled (*b*).

XV. AND I DECLARE that my tree shl hold anor eql —— share in the sd trust premes, & the income (*c*) thof upon the like trusts & subjt to the like powers & provons in favour of my daur L. & her [husbd & testy apptees] issue & orwise [& with the like provon, on failure of the prior trusts, for accruer or addon to the other shares in the sd trust premes] as are hinbfe decld & contd concerng the share of the sd K. in the sd trust premes, & the income (*c*) thof, in the same mner in all respts as if such trusts, powers, & provons were hrin repeated with the substiton of the name of the sd L. for the name of the sd K. [save & except, &c., *specify any varions in the trusts*].

(*a*) A general power to the trustees to vary the trusts declared by the will of a daughter's share on her marriage or otherwise, and to appoint other trustees of such share with her consent, is sometimes useful; compare form XX.

(*b*) See also the form XIX., below, p. 764, of a legacy to a daughter or son upon trusts declared by reference with variations.

(*bb*) See *Re Abbott*, [1893] 1 Ch. 54.

(*c*) For variations for real estate or a mixed fund, see p. 760, note.

XVI. PROVD ALWAYS, & I authorise my trees, in case they in their absolute discron shl think fit, at any time durg the life of any daur of mine who shl marry after my death [& under the age of —— yrs], & eir in contemplon of or after her marre, to settle all or any pt of the share or shares in the sd trust premes hinbfe bequed to such daur upon such trusts as my trees shl think fit for the benefit of such daur & her husbd or intd husbd, & any future husbd, & any chln or more remote issue of hers (whether by her then psnt or intd husbd, or any future husbd), or for the benefit of any of such objects, & with such ulterior or ultimate trusts, [such trusts being for the benefit of some issue of mine or their respive husbds or wives, or all or any of the statutory next of kin of any such issue,] & with such other provons as my trees shl think fit, with liberty for my trees or any or eir of them to act themselves or himself as the trees or tree of such settlemt, or to nominate any other psons or pson to act eir alone or in conjon with them or any or eir of them as such trees or tree: And the paymt or transfer of the shares of my sd daurs, or any of them, in the sd trust premes, may be wholly or partially suspended by my trees accdly durg the whole lifetime of such respive daurs [*or*, until they shl resply attn the age of —— yrs,] or such less period as my trees may think fit, & the income of the respive shares or pts thof so retained shl be pd to such respive daurs after they shl resply have attned the age of 21 yrs or married, & become entled to such respive shares in posson, for their respive septe use witht power of anticipon until such settlemt thof as afsd shl be exted: Provd nevs that my trees shl be at liberty, at their absolute discron, to pay or transfer the share or shares of any of my sd daurs, or any pt thof resply to her or them, in which case the power hinbfe given to my trees to settle the same shl cease as regards the share or shares or pt thof so pd or transferred.

Power to trustees to settle daughters' shares.

XVII. PROVD ALWAYS, & I declare that if any daur [child] of mine shl die in my lifetime, then the share or shares, whether origl or accrug, in the sd trust premes hinbfe directed to be held upon trusts for such daur [child] & her [or his]

Trusts of share of daughter dying in testator's lifetime leaving issue (*d*).

(*d*) As to the importance of providing expressly for this event, especially issue or orwise as afsd, & the income (*a*) thof shl be held upon the same trusts & subjt to the same powers & provons so far as capable of takg effect as if such daur [child] had died immedly after me (*b*).

Trusts of share of son dying in testator's lifetime leaving issue (*c*).

XVIII. PROVD ALWAYS, & I declare that if any son of mine shl die in my lifetime, then the share or shares, whether origl or accrug, in the sd trust premes hinbfe bequed in trust for him in the event of his survivg me & the income (*a*) thof shl be held in trust for all or any his chln or child, &c., *continue trust for chln at* 21, *&c.*, p. 746, *form* IV.; And if there shl be no such child, shl go & accrue by way of addon, *continue as in accruer clause*, p. 761, *form* XII.

Trusts of a legacy to a daughter or son by reference, with variations.

XIX. I GIVE & BEQUE the sum of £—— to my trees upon the like trusts, & subjt to the like powers & provons in favour of my daur ——, & her [husbd] issue & testy apptees & orwise, [*or*, my son ——, & his wife, issue, &c.,] as are hinbfe decld & contd of & concerng the sd sum of £—— in favour of my sd daur —— & her [husbd] issue & testy apptees & orwise [inclusive of a power to the sd —— to appt a life intt to a survivg husbd, & so that such power shl include her psnt husbd, & not be confined to a future husbd as the power of the sd —— is hinbfe confined, *or*, "& except that the husbd of my sd daur —— shl not take a life intt thrin," & except that, *specify any other varions; or if the beqt is to a son, say*, "a simple life intt being in the case of my sd son ——, substituted for the life intt hinbfe given to my sd daur —— for her septe use, witht power of anticipon"].

Bequest to trustees upon

XX. I BEQUE the sum of £—— to my trees to be settled by them for the benefit of my son —— & his wife & chln or

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where the gift is to collaterals or strangers, so that s. 33 of the Wills Act does not apply, see *Re Roberts*, 27 Ch. D. 346, 30 Ch. D. 234. In *Re Hone*, 22 Ch. D. 663, where a testator directed that a share of a daughter if she survived him should be subject to the trusts of her marriage settlement and paid to the trustees thereof, and the daughter died in the testator's lifetime but left children surviving him, it was held that under s. 33 of the Wills Act the daughter must for the purposes of the will be taken to have survived the testator, and that the share must be paid to the trustees of the settlement; see also *Re Pinhorne*, [1894] 2 Ch. 276.

(*a*) For variations for real estate or a mixed fund, see p. 760, note.

(*b*) Any power of appointment given to the daughter must, of course, in this event fail; see *Jones* v. *Southall*, 32 Beav. 31.

(*c*) See note (*d*), last page.

trust to make a settlement on a son.

remoter issue, or any of them, for such estes & intts, & with or witht any discronary trusts or powers as to the applicon of income or capl for their respive benefit, to be vested in the trees or tree of such settlemt or any other pson or psons, & with or witht any powers of apptmt, whether special or genl, to be vested in my sd son & his wife, or eir of them, includg power to my sd son to make a settlemt on a future marre, & with such ulterior or other trusts, powers, or limons over on failure of the primary trusts or limons for the benefit of any of my issue, & genlly in such mner, as my sd trees in their absolute & uncontrolled discron may think expedient, & to cause or permit to be inserted in any such deed of settlemt such powers & provons as to investmt & varyg investmts, & the apptmt of trees & such other clauses & provons (whether usual or special) as the circes of the case may appear to them to require or render expedient, it being my intention to give to my trees the widest discron as to the frame of such settlemt; And I declare that my trees may appt a septe set of trees of the settlemt to be made as last afsd if thought pper, & that the rect of the trees or tree for the time being of such settlemt for any moys, stks, funds or secs pd or transferred to them or him upon the trusts thof, shl be an effectual dischge to my trees for the same & exonerate them from all further responsibility in relon thto.

Trust for spendthrift (*d*).

XXI. I BEQUE the sum of £—— to my trees upon trust to invest the same at their discron in any of the investmts hinafter authorised in the case of my genl este, with power from time to time to vary such investmts at discron, And upon further trust that my trees shl in their absolute discron from time to time durg the life of A., or durg such shorter period or periods eir continuous or discontinuous as they shl think fit, pay all or any pt of the income of the sd sum of £——, & the investmts thof, or if they shl from time to time think fit, any pt of the capl thof, unto or apply the same for the mtce & psonal support or benefit of all or any one or more, to the exclusion of the other or others, of the follg psons, namely, the sd A. & his wife, if any, & his

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(*d*) See other forms, above, p. 723, and p. 742, note; and see the note thereto.

chln or remoter issue for the time being in existce, whether minors or adults, & the other psons or pson for the time being entled to or intted, whether absolutely, contingently, or orwise, in the sd legacy or any pt thof under the trusts hrin contd to take effect after the death of the sd A., in such proportions & mner as my trees shl in their absolute & uncontrolled discron from time to time think pper & subjt to the discronary trust or power lastly hinbfe contd, shl hold the sd income, or so much thof as shl not be applied under such discronary trust or power, upon the trusts & for the pposes upon & for wch the sd income wd for the time being be held if the sd A. were then dead: AND AFTER the death of the sd A. shl pay the income of the sd trust fund or of such pt thof as shl remain undisposed of, to his widow, if any, durg her life [widowhood] for her septe use, & so that she shl not have power to chge or dispose of such life intt durg the life of the sd A. or aftwds, by way of anticipon, & after the death [or marre] of such widow (if any) *trust for chln of A. at* 21, *&c., ultimate trust to fall into residuary este.*

Trust for imbecile or lunatic child.

XXII. I BEQUE the sum of £—— to my trees upon trust *to invest & vary investmts, as in last form:* And upon further trust that my trees shl durg the life of my son [daur] A., at their absolute discron pay or apply the whole or any pt of the annl income of the sd sum of £——, & the investmts thof, or if they shl from time to time think fit, any pt of the capl thof, unto or for the mtce & psonal support or benefit of the sd A., & may eir themselves so apply the same or may pay the same for that ppose to any other pson or psons witht seeg to the applicon thof: And shl durg the period of 21 yrs from my dece, if the sd A. shl so long live, accumulate the surplus, if any, of such income at compound intt by investg the same & the resultg income thof in any of the investmts afsd by way of addon to the capl of such fund, & so as to be subjt to the same trusts as are hby decld concerng the same, & shl durg the remr of the life of the sd A. in case he [she] shl survive the sd period of 21 yrs, pay or apply such surplus income (if any) to the pson or psons & for the pposes to whom & for wch the same wd for the time being be payable or applicable if the sd A. were then dead: And after the dece of the sd A., & subjt to the trusts afsd, shl stand possed of the sd sum of £——, & the investmts & accumulons thof, or so much thof as shl not have been applied or disposed of under the trusts afsd In trust, &c.

MISCELLANEOUS BENEFICIAL TRUSTS (*a*).

I. In trust for all or any, my brothers or brother & sisters or sisters livg at my death, & the chln or child then livg of any then deced brother or sister of mine, who, being male, attn the age of 21 yrs, or being female, attn that age or marry (*b*), in eql shares, but so that the chln of any deced brother or sister, if more than one, shl take eqlly betn them only the share wch their parent wd have taken if he or she had survived me.

Trust for brothers and sisters of testator living at his death and children of those dead.

II. In trust for all or any, the chln or child of my sd nephews & nieces living at the death of the survor of my sd nephews & nieces (*c*), & the chln or child then livg of any then deced child of any of my sd nephews or nieces, who, being male, attn the age of 21 yrs, or being female, attn that age or marry (*b*), if more than one in eql shares, but so that the grandchln of any nephew or niece shl take equally betn them only the share wch their parent wd have taken had he or she lived.

Trust for issue of nephews and nieces living at time of distribution *per stirpes.*

III. In trust for such of my brothers, *namg them,* & sisters, *namg them,* as shl be livg at the time of the failure or determinon of the prior trusts hinbfe contd (*e*), & the issue then livg & attng the age of 21 yrs, or in the case of females marrying, of such of my sd brothers & sisters hinbfe named as shl be then dead (*b*), in eql shares *per stirpes.*

Trust in remainder after several prior trusts for named persons, or such of them as are living at time of distribution, and the issue of those dead *per stirpes* (*d*).

(*a*) See above, p. 740, note (*b*).

(*b*) For real estate add here, "their, his, or her hrs & assns;" for a mixed fund of real and personal estate, "their, his, or her hrs, exs, ads, & assns resply."

(*c*) Where a trust for a class of persons living at the period of distribution follows several prior trusts, it may be more convenient to adopt the next form.

(*d*) Where the trust in remainder is (as in this form) in favour of those members of the class who are then living (which is not in general a desirable form of disposition), care must be taken not to postpone the vesting beyond the limits allowed by the rule against perpetuities, namely, a life or lives in being at the testator's death, and twenty-one years afterwards, see p. 752, note (*a*).

(*e*) Or, "at the time when this psnt trust shl take effect in

Trust for division among various persons unequally.

IV. IN TRUST to divide the sd trust premes into —— eql shares, & shl hold one of such shares in trust for such of the chln of my deced brother —— as shl be livg at my dece, & shl, &c., *attn* 21 *or marry,* if more than one in eql shares, & shl hold two other of such shares in trust for my sister ——, or in case she shl die in my lifetime in trust for such of her chln, &c., *as above;* & shl hold one other of such shares in trust for each of the followg psons, namely, *names:* PROVD ALWAYS & I declare that in case the trusts hinbfe decld of any of such —— shares shl fail, then the share or shares as to wch there shl be such failure (includg any further share added thto by virtue of this psnt provon) shl accrue & be added in eql proportions to the others of such —— shares, & shl be held in trust accdly.

General form of commencement of ultimate trust.

V. AND IN THE EVENT of the failure or determinon of the trusts hinbfe decld, & subjt to the trusts, powers, & provons hinbfe decld & contd, & to every or any exercise of such powers, & to any statutory provons wch may be applicable (*a*), my trees shl hold the sd trust premes & the income thof in trust, &c.

The same. Another form.

VI. AND IN CASE of the failure or determinon of all the trusts hinbfe decld & contd as to the whole or any pt of the sd trust premes or the income thof, my trees shl hold the sd trust premes & the income thof, or so much thof resply as to wch the trusts shl so fail or determine, & subject to any statutory provons wch may be applicable (*a*), *or,* "or so much thof resply as shl not become absolutely vested or be applied or disposed of under the trusts or powers hrin contd or any statutory provons" (*a*), IN TRUST, &c.

Ultimate trust in default of children of testator or another person.

VII. AND IF there shl be no child of mine, *or,* "of the sd ——," livg at my death, or born aftwds, who, being a son, attns the age of 21 yrs, or being a daur, attns that age or marries, then, subjt to the trusts & powers hinbfe decld & contd, & to every or any exercise of such powers, & to any statutory pro-

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posson." But both this form and that in the text may be open to objection where the prior trusts may be liable to determine as to different parts of the property at different times.

(*a*) These words have reference to the maintenance clause in the C. A., 1881, s. 43, and will, of course, only be applicable where the Act is relied on, as to which see above, p. 477, note, and *infra*, p. 772, note.

vons wch may be applicable (*b*), my trees shl hold the sd trust premes & the income (*c*) thof In trust, &c.

viii. In trust for such pson or psons & such pposes as the sd —— shl, while not under coverture by deed revocable or irrevocable, or whether covert or not by will or codl appt: And in default of & subjt to any such apptmt in trust for such pson or psons as wd by law have become entled to the sd trust premes at the death of the sd ——, if she had been absolutely entled thto & had died intestate, domiciled in England, & a spinster, such psons, if more than one, to take the shares wch they wd have taken by law.

Ultimate trust of personalt in favour of married woman so as to exclude her husband, and children dying in infancy (*d*).

ix. In trust for the psons or pson who wd at my death have been entled to my psonal este under the statutes for the distribon of the psonal este of intestates if I had died intestate, *or*, "who wd at the time of the failure or determinon of all the prior trusts hinbfe decld & contd have been entled, &c., if I had died at the time of such failure or determinon intestate," such psons, if more than one, to take the shares wch they wd have taken under the same statutes.

Ultimate trust for testator's next of kin.

Variation where next of kin to be ascertained at failure of prior trusts.

x. Provd always, & I declare that in the event of the failure or determinon of the trusts hinbfe decld & contd concerng any share (*f*) in the sd trust premes, such share as well as any share or shares accrug or added thto by virtue of this provo, & the income (*c*) thof, or so much thof resply as shl not have been applied or disposed of under the trusts or powers hrin contd, or by law vested in my trees, shl go & accrue by way of addon to the other share or shares (*g*) in the

Cross executory trust for accruer of shares of residue where the shares, or some of them, are settled (*e*).

(*b*) See note (*a*) last page.

(*c*) For real estate say, "rents and profits."

(*d*) See p. 481, note (*f*). It is assumed that there is a prior trust for the children who attain twenty-one, &c.

(*e*) See p. 758, note, as to settlement estate duty.

(*f*) Where the sons' shares are given absolutely, and the daughters' shares are settled say, "concerning any share of a daur of mine in the sd trust premes."

(*g*) In the case mentioned in note (*f*) say, "the share or shares of my other chln, both sons & daurs in the sd trust premes, & if more than one, in eql shares & proportions, & so that the share or shares wch shl so accrue & be added to the origl share of any daur of mine shl be held, &c."

sd trust premes, & if more than one, in eql shares & proportions, & every such accrug share shl be held upon the trusts & subjt to the powers & provons hrin decld & contd concerng the origl share or shares to wch the same shl be added, or as near ihto as circes will admit [but not so as to increase or multiply chges or powers of chging].

Accruer of shares of residue of children dying in testator's lifetime where the gifts are to them by name (*a*).

XI. PROVD ALWAYS, that if any of my sd chln shl die in my lifetime witht leavg issue livg at my death, the share in the sd trust premes expd to be hby given to such child, *if the daur's shares are settled, say,* "being a son, or for the benefit of such child, being a daur, & her issue," shl sink into & form pt of the sd trust premes, & be held & applied for the benefit of the other psons entled thto, in the same mner as if the child of mine so dying witht leavg issue had been origlly excluded from takg a share in the sd trust premes.

General direction that interests given to females shall be for separate use without anticipation (*b*).

XII. PROVD ALWAYS, & I declare that in every case in wch any este or intt, whether absolute or limd, & whether in posson, revon, remr, or expecty, & whether in real or psonal este, is by this my will given to or in trust for any female, the same shl in the event of her being married be for her septe use, & she shl not have power to dispose of or chge the same or any pt thof by way of anticipon.

General clause restraining alienation of life and reversionary or expectant interests in personal estate (*c*).

XIII. *Diron that intts of females shl be for their septe use witht power of anticipon, as in last form:* PROVD ALSO, & I hby declare that in case any act or event shl happen, whether in my lifetime or after my dece, whby any life intt in psonal este, or any anny hby given to or in trust for any male or any female not under coverture, or any pt thof, resply, wd, if belonging to him or her absolutely, become

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As to lapse of share of residue.

(*a*) A share of residue, the gift of which fails or is revoked by codicil, is not disposed of, *Skrymsher* v. *Northcote*, 1 Swans., at p. 570; but where on the disposition failing it is given back to the residue, it passes as part of the residue as if the original disposition had not been made: *Re Palmer*, [1893] 3 Ch. 369, overruling *Humble* v. *Shore*, 7 Hare, 247.

(*b*) See p. 466, note; and as to restraining anticipation in the case of absolute interests, see p. 710, note. That the restraint if offending against the rule as to perpetuities will be disregarded, see *Re Teague*, L. R. 10 Eq. 564; *Re Cunynghame*, L. R. 11 Eq. 324; *Re Ridley*, 11 Ch. D. 645.

General clause restraining alienation.

(*c*) For a clause applicable to real estate, see p. 794; and compare the form applicable to annuities, p. 721. A general clause of this nature should not be inserted without bearing in mind the rule against perpetuities: see vested in or chged in favour of any other pson or psons or a corporon, then such life intt or anny shl cease as if he or she were dead : And in the case of a life intt so ceasg the income wch shl be so forfeited shl durg the remr of the life of the pson incurrg the forfeiture thof be held upon the trusts upon wch the same would for the time being be held if such person were dead : PROVD ALSO, & I declare that in case any event whatever shall happen, whether in my lifetime or aftwds, bfe the time hby apptd for the vestg in posson of any legacy or share of psonal este hby given to or in trust for a male or a female not under coverture [other than a settlemt of such legacy or share or some pt thof made bfe or after the marre of the legatee with the consent in writg of my trees], whby the pson entled thto under the trusts or provons hinbfe contd wd if the sd legacy or share belonged to him or her absolutely be deprived of the psonal enjoymt thof or of any pt thof, then such legacy shl sink into my residuary este, & such share shl be disposed of as if the legatee incurrg such forfeiture had died in my lifetime witht leavg issue.

Clause declaring trusts in favour of family of child dying in testator's lifetime by reference to trusts for testator's widow and children.

XIV. AND I DECLARE that if any child of mine shl die in my lifetime leavg a wife or husbd, or a child or chln [or remoter issue] livg at my death, then my trees shl stand possed of the share in the sd trust premes to wch such child wd have been entled had he or she survived me & attned the age of 21 yrs, upon & subjt to such trusts, powers, & provons in favour of the survivg wife or husbd, & child & chln [& remoter issue] resply of such deced child of mine as shl correspond with the trusts powers & provons hinbfe decld & contd concerng the sd trust premes in favour of my wife & child or chln [& remoter issue], resply, in the same mner as if such trusts, powers, & provons were hrin repeated with such modificons as the case may require [except that the survivg wife or husbd, if any, of such deced child of mine shl not have any power of apptmt among the issue of such child]: PROVD ALWAYS, that in case the trusts hinbfe decld concerng the share of such deced child of mine shl fail, such share & the income thof shl, subjt to the

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Re Ridley, 11 Ch. D. 645 ; *Herbert* v. *Webster*, 15 Ch. D. 610 ; *Cooper* v. *Laroche*, 17 Ch. D. 368. It may be void for repugnancy, see *Re Grey*, 34 Ch. D. 85, 712 ; *Corbett* v. *Corbett*, 14 P. D. 7 ; *Re Porter*, [1892] 3 Ch. 481.

trusts & powers afsd or arisg by operon of law, fall into & revert to my residy este.

Provision as to division of trust fund where female is past child-bearing.

XV. PROVD ALWAYS, & I declare that if the sd —— shl attn the age of [fifty] yrs, it shl be lful for my trees to distribute the sd trust premes or such pt thof as wd then be distributable if she were dead, witht regard to the possibility of her havg other chln, [but so that every child of hers to whom a share in the sd trust premes shl be pd or transferred durg her life shl, if required by my trees, enter into a bond or covt at the expse of my este, for refundg a proportionate pt of the same in the event of her havg any other child or chln who shl attn a vested intt in the sd premes.]

Dower clause (*a*).

XVI. AND I DECLARE that the benefits hby given to my wife shl be in full satisfon & bar of all dower & freebench wch she may be entled to claim out of any freehd, copyhd, or customary este, of or to wch I have been, am or shl be seised, possed, or entled.

MAINTENANCE, ETC.

Maintenance clause. Ordinary form for children or grandchildren

I. I DECLARE that my trees may, after the death [or future marre] of my wife, [after the death of the sd, *tenant or tenants for life*,] apply the whole, or such pt as they in their discron shl think fit, of the income of the expectant or presumptive share of any child [or grandchild] of mine [of the sd ——] in the sd trust premes (*b*) under the trusts hinbfe contd (*c*), for

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As to dower.

(*a*) This clause can now rarely be required, see 4 Dav. Prec. p. 93. Without such a clause a gift to a wife, married since the Dower Act, of any land out of which she would be entitled to dower if the land were not so devised, or any estate or interest therein (including the income of the proceeds of sale of land, or a part of such proceeds of sale, *Re Thomas*, 34 Ch. D. 166), bars the wife's right to dower (3 & 4 Will. 4, c. 105, s. 9). A bequest to the wife in satisfaction of dower has no priority over the other legacies, unless so provided: *Re Greenwood*, [1892] 2 Ch. 295.

(*b*) Or say, "the income of the expectant or presumptive legacy or share, &c.," as the case may require, and make consequential alterations in the accumulation clause.

(*c*) Where there are annuities charged, add, if appropriate, "subjt to & after paymt of the annies hinbfe beqed, or a proportionate pt thof."

or towards his or her mtce, educon, or benefit (*e*), & may eir themselves so apply the same, or may pay the same to the [parent or] gdians or gdian of such child [or grandchild] for the ppose afsd, witht seeing to the applicon thof.

of testator or another person (*d*).

II. AND SHL, durg the suspense of absolute vestg of any such share, accumulate the surplus, if any, of the income thof at compound intt, by investg the same & the resultg income thof in any of the investmts hby authorised, in augmenton & so as to follow the destinon of the share or fund from wch the same shl have proceeded, but with power to apply any such accumulons in any subseqt yr for or towards the mtce, educon or benefit of the child [or grandchild] for the time being presumptively entled as afsd, in the same mner as such accumulons might have been applied, had they been income arisg from the origl trust fund in the then current yr.

Accumulation clause. Ordinary form as above.

III. I DECLARE that my trees may, after the death, &c., *as in form* I., apply the whole or such pt as they in their discron shl think fit, of the income of the expectant or presumptive share or shares of any child or chln [grandchild or grandchln] of mine [of the sd ——] in the sd trust premes under the trusts hinbfe contd, for or towards his or her mtce, educon, or benefit, or for or towards the common mtce, educon, or benefit of the chln [grandchln] for the time being entled expectantly or presumptively under such trusts, & may either themselves so apply the same, or may pay the same to the [parent or] gdians or gdian of such child or chln [grandchild or grandchln] for the pposes afsd, witht seeing to the applicon thof. *The accumulon clause will be the same as above form* II., *addg after*

Maintenance and accumulation clauses for children or grandchildren where the income may be applied as a common fund.

(*d*) See the provisions as to maintenance and accumulation contained in the C. A., 1881, ss. 42, 43, described at pp. 477 and 610, notes, the former of which notes states the cases in which it is generally expedient to insert express provisions. Sometimes the income is authorised to be applied as a common fund for the maintenance of all the children under age; and occasionally where the fund is small, recourse to the capital is authorised; for which purposes express provision is of course necessary.

As to the maintenance clauses in the C. A., 1881.

(*e*) Where circumstances require it, the words, "whether there is any other fund applicable or any psn bound by law to provide for such mtce or educon or not" may be added to the clause in the text after "benefit," the words, "or any psn, &c.," being omitted where the father takes a life interest; the power in the C. A., 1881, s. 43, provides for this; see p. 477, note.

the words, "presumptively entled as afsd," *the words,* "or for or towards the common mtce, educon, or benefit of the chln [or grandchln], for the time being objects of the last precedg trust."

Maintenance and accumulation clauses adapted to various dispositions (*a*).

IV. I DECLARE that my trees may, after the determinon or failure of every prior life or other intt or intts, if any, apply the whole, or any pt at their discron, of the income of the expectant, contingent, presumptive or vested share, portion or legacy of any pson, who shl be under the age of 21 yrs, & being a female a spinster, under any of the trusts or disposons contd in this my will, for or towards his or her mtce, educon, or benefit (*b*), & may eir themselves so apply the same, or may pay the same to the parent or gdians or gdian of such pson for the ppose afsd, witht seeing to the applicon thof: AND SHL durg the minority of any such pson being a male, & minority & spinsterhood of any such pson being a female, accumulate, &c., *continue accumulon clause as in form* II., *saying,* "share, portion, or legacy," *&* "of the pson for the time being expectantly, contingently, presumptively, or absolutely entled thto."

Maintenance and accumulation clauses. A very general form (*c*).

V. I DECLARE that my trees may apply the whole or any pt at their discron of any income, to wch any minor shl, or, if of full age being a male, or of full age or married being a female, wd for the time being be entled in posson under any of the trusts or disposons hrin contd, for or towards his or her mtce, &c., *as in last form;* AND SHL, durg such minority, or minority & spinsterhood, as the case may be, accumulate the surplus, if any, of the same income (*d*), &c., *continue*

(*a*) This form is not well adapted to a case where there are annuities or other prior interests affecting part only of the income. In that case the next form is to be preferred.

(*b*) See p. 773, note (*e*).

(*c*) This form is of a very general application, and is adapted to a case where annuities are charged, and where the infant is tenant for life.

(*d*) In the case of an infant tenant for life, it is desired that the accumulations should belong to him if he attains twenty-one, &c. (which would not be the case under the statutory provision, see p. 478, note), continue as follows :—

Variation for tenant for life.

"in the way of compound intt, by investg the same & the resultg income thof in any of the investmts hby authorised, & shl stand possed of such accumulons & investmts upon the trusts follg, that is to say, if the pson durg whose minority the same shl have been accumulated shl being a male attn the age of 21 yrs, *accumulon clause as in form* II., *saying,* "fund from wch the same shl have proceeded" *&* "of any such minor as afsd."

Maintenance and accumulation clause. Short form.

VI. I DECLARE that my trees may at discron apply all or any pt of the income of the share to wch any minor child shl be entled in expectancy, & wd if of full age be entled in posson under the trusts hinbfe contd for his or her mtce, educon, or benefit, in such mner as may be thought fit, & shl invest the surplus income if any thof in any investmts hby authorised in augmenton of the capl of such share.

Maintenance and accumulation clauses for testator's children or grandchildren where vesting is postponed to 25, &c.

VII. I DECLARE that my trees may, &c., *as in form* I., *addg after* "benefit," "durg such time as such child or grandchild shl being a male, be under the age of 25 yrs, or being a female, be under that age & a spinster," *& addg at the end,* "or may pay the same to such child or grandchild psonally if he or she shl have attned the age of 21 yrs," *accumulon clause as in form* II., *addg,* PROVD ALWAYS, that if at the end of 21 yrs from my death any child or grandchild of mine shl not have attned a vested intt in the sd premes, the trust for accumulon lastly hinbfe contd shl cease to operate as to the expectant share of such child or grandchild in the sd trust premes, & the whole of the income of such share shl thenceforth & until such child or grandchild shl attn a vested intt be pd to him or her for his or her absolute benefit" (*e*).

Income to be paid to wife for maintenance of children.

VIII. I DECLARE that durg the minority of each son of mine, & durg the minority & discoverture of each daur of mine, the income of his or her presumptive or expectant share shl be pd to my wife for the mtce & educon of such son or daur witht liability to acct for the applicon thof, & after the death of my wife the sd income, or any pt thof, shl be applied by my trees for the same ppose, eir directly or by the paymt thof to the

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or being a female attn that age or marry, then in trust for such pson absolutely, but if such pson shl die under the age of 21 yrs, & (in the case of a female) witht havg been married, then upon trust to add the same to, & so that the same shl follow the destinon of the fund from wch the same shl have proceeded, but my trees shl have power to apply any such accumulons in any subseqt yr for or towards the mtce, educon, or benefit of any such minor as afsd in the same mner, &c., *as in form* II."

(*e*) It is assumed that the primary trust is for *such* children or grandchildren as attain 25; otherwise the effect of this clause would be to make the shares vest at 21; see *Southern* v. *Wollaston*, 16 Beav. 166.

gdian or gdians of such son or daur, witht liability to see to the applicon thof, & any surplus shl be accumulated at compound intt as an addon to the share of such son or daur.

Advancement clause.

Ordinary form for children or grandchildren of testator or another person.

IX. I AUTHORISE my trees after the death [or future marre] of my wife [after the death of the sd, *tenant or tenants for life*] or prevsly thto with her [his, *or*, their respive] consent in writg, to raise any pt or pts not exceedg in the whole [a moiety] of the then expectant, presumptive or vested share of any child [or grandchild] of mine [of the sd ——] in the sd trust premes (*a*) under the trusts hinbfe contd, & to pay or apply the same for the advancemt or benefit of such child [or grandchild] in such mner as my trees shl think fit (*b*).

The same, adapted to various dispositions.

X. I AUTHORISE my trees, after the determinon or failure of every prior life or other intt or intts (if any), or prevsly thto with the consent in writg of every pson in existce for the time being entled to any such prior intt or intts, whether vested or contingent, to raise any pt or pts not exceedg in the whole [a moiety] of the then expectant, contingent, presumptive, or vested share, portion, or legacy of any pson, under any of the trusts or disposons of this my will, or any codl hto, & to pay or apply the same for his or her advancemt or benefit as my trees shl think fit (*c*).

(*a*) Or say, "the expectant, presumptive, or vested legacy or share, &c.," as the case may be.

Addition for land.

(*b*) If the daughter's shares are settled the following words may be added, "& so that this psnt power may be exercised to the extent agrd over the capl of any share or shares in wch any daur of mine shl be entled to a life intt only." If the trust property may consist of land, the following addition may be desirable, "& if necy or convenient the same may be raised by my trees by mtge of any hds for the time being subjt to the trusts of this my will, & no mtgee shl be concerned to enquire as to the propriety of raisg the same, or as to the amt wch ought to be raised, & for the ppose of givg effect to this psnt provon the sd trust premes, *or as the case may be*, shl as far as necy be valued in such mner & at such times as my trees shl consider pper, & such valuon shl be conclusive." As to bringing interest on advancements into account on the distribution of the fund, see *Re Dallmeyer*, [1896] 1 Ch. 372; *Re Lambert*, [1897] 2 Ch. 169.

(*c*) Where the trust property may consist of land, see the addition in the last note, saying, "such share or portion shl, &c."

The same. A very general form.

XI. I AUTHORISE my trees to raise any pt or pts not exceedg in the whole a moiety of the capl of any share, portion, or legacy, to wch any minor shl, or if of full age being a male, or of full age or married being a female, wd for the time being be entled [whether absolutely, or for a life, or other limd intt only, &] whether in posson or in revon or expectcy, under this my will, or any codl hto, & to pay or apply the same for his or her advancemt or benefit, as my trees shl think fit: Provd that no such advancemt shl be made durg the existce of any prior life or other intt or intts, whether vested or contingent, witht the consent in writg of the pson or psons entled thto (*c*).

Power of maintenance and advancement out of capital. Short form.

XII. I DECLARE that my trees may pay or apply the whole, or any pt at their discrǒn, of the income, or the capl, of the share to wch any child shl for the time being be entled in expectcy, & wd, if of full age, be entled in posson, under the trusts hinbfe decld, for or towards his or her mtce, educon, advancemt, or benefit, & shl invest the surplus income (if any) in any such investmts as are hby authorised, in augmenton of the capl of such share.

Accumulation clause where maintenance is not intended (*d*).

XIII. I DECLARE that durg the suspense of absolute vestg of the share, *or*, "portion," *or*, "legacy," to wch any child, *or* "pson," shl for the time being be entled in expectcy, under the trusts [lastly] hinbfe contd, & to wch such child, *or*, "pson," if of full age, or if a female married, wd be absolutely entled in posson, my trees shl accumulate the annl income of such share, *or*, "portion," *or*, "legacy," at compound intt, by investg the same, & the resultg income thof, in any of the investmts hby authorised, in augmenton & so as to follow the destinon of the capl of such share, *or*, "portion," *or*, "legacy."

Maintenance and accumulation clause for children of subsequent tenant for

XIV. AND I DECLARE that the sevl provons as to mtce & educon of minors, & the accumulon & disposal of surplus income durg minorities, hinbfe contd with referce to the share to wch any child of mine shl be entled in expectcy as afsd, shl, after the determinon or failure of the trusts hinbfe contd, wch are prior to the trust hinbfe decld for the child or chln of the

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(*d*) Such absolute trusts for accumulation are not favoured by the Court, which has overridden such a trust by allowing a proper sum for maintenance: *Re Collins*, 32 Ch. D. 229; and see *Re Thatcher*, 26 Ch. D. 426.

life by reference to trust for testator's children.

sd ——, extend & be applicable to the income of the share to wch any child of the sd —— shl for the time being be entled in expectcy, under the trusts hinbfe decld, with such alterons as may be necy to adapt such provons to that case.

Advancement clause for children of subsequent tenant for life by reference to trusts for testator's children.

XV. AND I DECLARE that, witht prejudice to the trusts hrin contd in priority to the trusts for the sd A., *tenant for life in remr*, & B., his wife, my trees shl, after the death of the sd A. & B., or durg their respive lifetime with their respive consent in writg, have the like power of advancemt in favour of the child or chln of the sd A. as is hinbfe contd with reference to the expectant, presumptive, or vested share of any child of mine, with such alterons as the case may require.

Management and maintenance clause for real or leasehold property, during minority.

Variations for a mixed fund of realty and personalty (*a*).

XVI. AND I DECLARE that [after the death [or future marre] of my sd wife, *or*, "of the sd ——," &] durg the minority [& spinsterhood] of the sd —— my trees shl take & retain posson or rece the rents & profits of the sd real & leasehd hds & premes hinbfe devised & bequed to [in trust for] the sd —— as afsd, & manage the same, with all such powers as are conferred by the 42nd section of the Conveyancg & Law of Ppty Act, 1881, & all such other powers in that behalf, as if they were absolutely entled thto, & may after paying all outgoings & expses, apply at their discron the whole or any pt of the net rents & profits thof [& of the income of the psonal este hinbfe bequed in trust as afsd] for or towards the mtce, educon, or benefit of the said ——, with power to

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As to minority clause.

(*a*) This form and the two next are intended for a specific or general devise of real or leasehold property with or without personalty to or in trust for an infant absolutely, or subject to a gift over on death under twenty-one or otherwise. It might also be adapted to a gift for life. For a similar clause adapted to a devise in strict settlement, see *infra*, DEVISES IN STRICT SETTLEMENT; and for a more detailed power of management, not confined to minorities, where there is a trust for conversion, see *infra*, p. 782. The clause might generally be omitted in reliance on the C. A., 1881, s. 42, which would apply and would probably suffice, subject to a question as to the disposal of the accumulations, for which it may be proper, in order to prevent difficulty, to make express provision, especially if the property is vested in trustees, so that s. 43 of the above Act might also apply (see p. 611, note). If the Act is relied on, form XIX. should be inserted *mutatis mutandis*, as far as required. As to the legal operation and effect of clauses for maintenance and advancement where no legal estate is vested in the trustees, see *Dean* v. *Dean*, [1891] 3 Ch. 150. 156.

As to farms.

For agricultural property a power to carry on and stock farms in hand should generally be inserted, see p. 783, form IV.

pay the same to his [her] gdian or gdians for that ppose witht seeing to the applicon thof; & shl accumulate the surplus of the sd rents & profits [& income] durg the minority [& spinsterhood] of the sd ——, by investg the same & the resultg income thof in any investmts hby or by law authorised in the case of my residy este or capl moy arisg thfrom, *or as the case may be*, as an addon to & so as to devolve as psonal este with the sd hds & premes, but with power to apply such accumulons for the mtce, educon, or benefit of the sd —— in any subseqt yr.

The same, as to residuary real and personal estate. Short form.

XVII. I EMPOWER my trees if & while the said A. shl be under the age of 21 yrs, in their absolute discron eir to retain my sd residy este (real or psonal) in its then actual condon or state of investmt, or at any time to sell, get in, or convert the same, & to invest any moys arisg from or formg pt of the same in any of the investmts hinbfe authorised, & to vary the same & to exercise all such powers of managemt, leasg, & orwise in relon to any ppty retained as if they were absolute owners, & to apply income or capl for the mtce, educon, advancemt, or benefit of the sd A. at discron, & eir directly or by paying the same to his gdian or gdians for that ppose, & to accumulate any unapplied income by the investmt thof in mner afsd as an addon to & so as to go with the capl.

The same, for real or leasehold property devised to children as tenants in common with variations as above.

XVIII. AND I DECLARE that, [after the death [or future marre] of my sd wife, *or*, "of the sd ——," &] durg the minority of any son [or grandson], or the minority & spinsterhood of any daur [or granddaur] of mine, [of the said ——], my trees shl take & retain posson or rece the rents & profits of the share in the sd real & leasehd hds & premes hinbfe devised & bequed to wch such minor shl be [expectantly] entled, & manage the same, with all such powers, &c., *as in last form*, & may, after paying all outgoings & expses, apply at their discron the whole or any pt of the net rents, profits, & income of the [expectant] share of such minor in the sd real & leasehd premes [& in the psonal este & premes hinbfe bequed in trust as afsd], for or towards the mtce, educon, or benefit of such minor, with power to pay the same to his or her gdian or gdians for that ppose, witht seeing to the applicon thof; & shl accumulate the surplus of such net rents, profits,

& income durg the minority, or minority & spinsterhood, of such minor, by investg the same & the resultg income thof in any investmts hby or by law authorised in the case of my residy este or capl moy arisg thfrom as an addon to & so as to devolve as psonal este with the [expectant] share of such minor in the sd hds & premes, but with power to apply such accumulons for his or her mtce, educon, or benefit in any subseqt yr.

The same, relying on and modifying statutory clause (*a*).

XIX. AND I HBY DECLARE that my trees shl be the trees of this my will for the pposes of the 42nd section of the Conveyancg & Law of Ppty Act, 1881, the powers & provons of wch shl apply in relon to the sd real & leasehold hds & premes hinbfe devised & bequed [& so that it shl be obligatory on my trees to enter into & continue in the posson or rect of the rents & profits of the same hds & premes [or any undivided share thof as the case may be] in every case thby provd for]; [AND THAT in addon to the powers of the sd Act, my trees shl have power, &c., *insert any addonal powers required*]; [AND THAT any surplus rents & profits & the accumulons thof may durg any such minority as is provd for by the sd Act be invested in any of the investmts hby authorised in the case of my residy este or capl moy arisg thfrom], & that any accumulons of rents & profits made durg any such minority as afsd shl (witht prejudice to the power to apply the same at any time as if the same had been rents & profits of the current yr) be added to & go & devolve as psonal este with the sd hds & premes.

Power of advancement for real or leasehold property. Variations for a mixed fund, and other circumstances (*b*).

XX. I AUTHORISE my trees at any time [after the death [or future marre] of my sd wife *or*, "of the sd ——," or prevsly thto with her [his] consent in writg] to raise by sale, mtge, or orwise, any pt or pts not exceedg in the whole the sum of £——, *or*, "not exceedg in the whole a moiety of the value (to be determined for that ppose in such mner as my trees shl in their discron think fit)," of [the then expectant presumptive or vested share of any child [or grandchild] of mine [of the said ——] in] the sd real & leasehd premes, [*or*, *if a mixed fund*, the sd real & psonal este] under the trusts

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(*a*) See p. 778, note.

(*b*) This form with the appropriate variations is adapted to go with either of the three preceding forms.

afsd, & to pay or apply the same for his or her advancemt, or benefit as my trees shl think fit, Provd always & I declare that no pchaser or mtgee shl be concerned to enquire as to the propriety of raisg any moy for the ppose of such advancemt, or the amt wch ought to be raised or to see to the applicon thof.

Power to keep up house for infants.

XXI. I EMPOWER my trees, if they shl think fit, to apply all or any pt of the income applicable under this my will for the mtce or educon of my infant child or chln for the time being, in or towards providg a suitable residce, & keepg up an establishmt for such child or chln, or any of them, & for that ppose to take on lease or from yr to yr any pper dwg-house, & defray all expses connected thwith, or with the establishmt to be kept up thrin, & also, if they shl think fit, to permit any adult child or chln of mine to share the benefit of such residce & establishmt eir with or witht contributg towards the expses thof, & upon such terms as to the contribon, if any, to be made by such adult child or chln, & in all other respts as my trees may in their discron think fit.

The same. Power to purchase furniture, and to permit testator's sister to reside with infants.

XXII. I EMPOWER my trees at any time, if they shl in their absolute discron deem it expedient, to take on lease or rent a house in such place as they shl think fit as a residce for my chln or any of them until the youngest child for the time being shl attn the age of 21 yrs or marry, or for any less period, & to retain & use, if thought fit, all or any pt of my furniture & househd & domestic effects for the ppose of furnishg such house, & also, if deemed expedient, to pchase any furniture or effects for such ppose & so that such pchased furniture & effects shl subjt to such user thof be held as pt of my residy este, & to pay the rent, rates, & taxes & expses of insurce & repairs payable in respt of such house, & any other costs incidental to the takg & furnishg of the same out of the income or capl of my genl psonal este, includg power to retain a fund for that ppose, & for the paymt of the annl sum payable to such of my sisters as may reside with my chln as hinafter mentd, PROVD that the fund so retained & the income thof shl subjt to & after satisfying the pposes last afsd form pt of my residy este; AND I FURTHER EMPOWER my trees to permit all or any of my chln & one of my sisters to occupy & use such house, furniture & effects durg the period afsd, & to pay the sum of £—— p.a. out of my genl psonal este by half-yrly paymts to such one of my sd sisters as shl reside with my chln as afsd, or a proportionate amt for any pt of a yr durg wch she may so reside; PROVD that if any question shl arise as to wch of my sisters shl reside with my sd chln as afsd, such question shl be decided by a majority of my trees.

POWERS TO TRUSTEES AND EXECUTORS (*a*).

Power to manage real and leasehold estate until sale.

Full form (*b*).

I. I DECLARE that it shl be lful for my trees to manage & cultivate or superintend the managemt & cultivon of the real & leasehd hds hinbfe devised & bequed to them in trust [for sale until the same shl be sold (*c*)], includg power to cut timber & underwood for sale, repairs, or orwise, to open & work mines, minls, quarries, & brickfields, & to erect, pull down, & repair houses & other bldgs, & to drain & make roads & fences, & orwise to improve the sd premes, & to insure (*d*) bldgs agst loss or damage by fire, & to make allowces & remissions of rent to & arrangemts with tenants & others, includg power to condone & to grant licence to commit breaches of covt, & to accept surrenders of leases & tenancies (*e*), & genlly to deal with the ppty as if they were absolute owners thof witht being responsible for any loss or damage (*f*): AND ALSO power to delegate, eir exply or by implicon durg such period or periods,

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(*a*) See also CONVERSION AND INVESTMENT, above, p. 729 *et seq.;* and MAINTENANCE, &c., p. 772 *et seq.*

(*b*) Many of the powers in this clause are given by the C. A., 1881, s. 42, where the Act applies; but the statutory clause is confined to minorities, and it is doubtful whether it applies where there is a trust for conversion; see p. 479, note. The clause in the text should therefore be inserted when appropriate.

(*c*) If there is no trust for sale omit the words in brackets.

(*d*) Power to insure is given by the T. A., 1893, s. 18.

Power to accept surrenders of leases.

(*e*) Power to accept surrenders of leases is conferred on the tenant for life by the S. L. A., 1882, s. 13 (see p. 616, note); this power to the trustees to accept surrenders would, therefore, by s. 56 of the Act not be exerciseable without the consent of the donee or donees of the statutory powers, if any; unless there is a trust for sale, in which case such consent is dispensed with by the Act of 1884, s. 6.

(*f*) The rest of the form, except the clause at the end, may usually be omitted.

& upon such terms as they shl think fit, the exercise of all or any of the powers of managemt & improvemt hinbfe contd to the pson or psons for the time being entled to the enjoymt of the rents & profits of the sd trust premes [or of any pt thof] if of full age, or to any other pson or psons intted thrin under this my will, witht being responsible for any loss thby occasd; AND ALSO power conclusively to determine eir by way of anticipon or orwise, & eir exply or by implicon what pt, if any, of the produce of timber, mines, minls, quarries, or brickfields shl be applied as capl, & what pt, if any, as income, & so that such pt as shl be determined to be capl shl be disposed of as if the same had arisen from a sale of the sd premes: AND ALSO power to raise & pay the costs & expses attendg the exercise of the sd powers of managemt & improvemt out of the income, or as to any monies expended in stockg farms in hand or in paymt of compenson to out-going tenants or in improvemts wch my trees shl consider to be of a permanent nature, by mtge or sale of the sd premes or any pt thof, or orwise out of the capl of the sd trust premes.

The same. Short form.

II. I EMPOWER my trees to manage & cultivate my real & leasehd hds hinbfe devised & bequed to them in trust [for sale until the same shl be sold (*g*)] with all the powers in that behalf of absolute owners, includg power to cut timber & underwood for sale, repairs, or orwise, & to repair & insure houses & bldgs, & to make allowces to & arrangemts with tenants & others, & to accept surrenders of leases & tenancies, with power out of the income or capl of the premes [my residy este] to make any outlay for the ppses afsd (*h*).

Another form.

III. I EMPOWER my trees to manage, repair, insure, demise, for any term of years or tenancy & at any rent, & deal & arrange with tenants of any real or leasehd hds hinbfe given in trust for sale until the same shl be sold, with the same uncontrolled discron as if my trees were absolute benefl owners thof.

Power to carry on and stock farms.

IV. I ALSO EMPOWER my trees in their absolute discron to take & retain posson for such period as they shl think fit of any farm or farms formg pt of my residy este, & to manage stk & cultivate

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(*g*) If there is no trust for sale omit the words in brackets.

(*h*) *Re Bellinger*, [1898] 2 Ch. 534.

the same, & to employ & expend such pt of the capl or income of my residy este as they shl think fit for that ppose or for paying compenson to outgoing tenants: AND ALSO if deemed expedient to raise any moy required for any such ppose as afsd by mtge of any such farm or farms, or any lands or hds formg pt of my residy este, & so that no mtgee shl be concerned to see that the moy raised is wanted or as to the applicon thof, & any such mtge may be in such form & contain such powers & provons as may be thought fit: AND I FURTHER EMPOWER my trees to hire & engage bailiffs, agents, labourers, & workmen, & to employ the existg live & dead stk (if any), & buy & sell live & dead stk, & genlly to act in all mres relatg to any such farm or farms as if they were the absolute benefl owners thof: And my trees shl be free from all responsibility & be fully indemnified out of my residy este in respt of any loss arisg in relon thto, & shl have power to determine what pt of the produce & moys arisg from the carrying on of such farm or farms shl be treated & applied as capl & what pt as income, & such determinon shl be bindg & conclusive on all psons intted under this my will or any codl hto.

Power to grant leases of unsold lands (*a*).

V. I DECLARE that it shl be lful for my sd trees to demise all or any of my real & leasehd hds & premes hinbfe devised & bequed in trust [for sale, & wch shl for the time being remain

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As to effect of S. L. Acts.

(*a*) Where the land is devised *without any trust for sale*, and there is a tenant for life or limited owner of the whole or any undivided share within s. 2 or 58 of the S. L. A., 1882, the powers of the Act will apply, and be exerciseable by him as to the entirety or his share, and any concurrent powers given to the trustees would under s. 56 be exerciseable only with his consent. Where the land is devised *in trust for sale*, and there is a tenant for life, or limited owner within s. 63, of the proceeds of sale or any share thereof, the powers of the Act would also apply, and would be vested in such limited owner, or, if the beneficial interest is divided, in him together with the other persons beneficially entitled in possession to the other shares, whether absolutely or for limited interests; but the powers would in that case, by the Act of 1884, s. 7, be suspended unless an order of Court were obtained, and in the meantime by s. 6 of that Act no statutory consent would be necessary to the exercise of any express powers given to the trustees; see above, p. 494, note.

As to the insertion of express powers of leasing, &c.

Where the real estate is devised in trust for sale, or (without a trust for sale) in trust for tenants in common, or for an infant or other person under disability, the trustees should be invested with any appropriate leasing and other powers, whether the Act may apply or not, either in detail or by incorporating the statutory powers; the powers being of course subject to such (if any) statutory consent as may be necessary. For powers to grant building and mining leases, which may be adapted with merely verbal alterations to a will, see pp. 617, 619.

unsold (*b*)], for any term of yrs not exceedg 21 yrs [or for a ming lease not exceedg 40 yrs, or for a bldg or improvg lease not exceedg 99 yrs], to take effect in posson or within 6 calr months from the date of the lease, *or*, "for any term of yrs eir in posson or revon, & for any ppose," with or witht takg a fine or prem, & upon such terms & condons in all respts as they shl think fit, but so that any sum reced as a fine or prem shl be applied as if the same were proceeds of a sale, & so that in case any lease shl be grted on the surrender or determinon of a then existg or prior lease or tenancy, the value of the intt so surrendered, or the tenant rt or claim to compenson for improvemts or orwise in respect of such tenancy, may be taken into acct in fixg the rent & terms of the new lease (*c*).

Power of partition over realty and personalty (*d*).

VI. I AUTHORISE my trees to concur with the other pson or psons entled to or havg power in that behalf in relon to any ppty, whether real or psonal, held in undivided shares, in makg a parton of such ppty, [& that notwg that any of my trees or a sole tree may be entled to or intted in any of the other shares of the same (*e*)] & to give or rece moy for equality of parton, & to make any such parton upon such terms & condons as they shl think pper, & for the ppses afsd to exte & do all such assurces & things as they shl think fit; And the ppty wch shl on any such parton be taken by my trees in sevlty, shl be held upon, & subjt to the like trusts, powers, & provons (so far as applicable) as the undivided share or shares for wch the same shl be substituted, & any sum agrd to be pd for equality of parton may be pd out of my residy psonal este, or raised by mtge of or chge upon the ppty so taken in sevlty, & any moys reced for equality of parton shl be applied as if the same had arisen from a sale of the sd undivided share or shares.

But the comprehensive power in form VII., *infra*, by reference to the Act is to be preferred to the insertion of detailed powers. The addition to the trust for sale and powers of leasing for a reversionary interest or undivided share at pp. 499, 500, could be readily adapted to a will; but the provision for reversionary interests is of little importance having regard to the S. L. Acts.

As to real estate devised in strict settlement, see *infra*, DEVISES IN STRICT SETTLEMENT.

(*b*) If there is no trust for sale omit the words in these brackets.

(*c*) See as to this the S. L. A., 1882, s. 13 (5); above, p. 615, note.

(*d*) See the S. L. A., 1882, s. 3 (iv.) as amended by the Act of 1890, s. 5; and as to the effect of the Act where express powers are given, see last page, note.

(*e*) See above, p. 500, note (*c*).

Clause giving the trustees express powers of leasing, &c., by reference to S. L. Acts.

Addition where the statutory powers are extended (*a*).

VII. I DECLARE that it shl be lful for my trees to exercise over or in relon to all or any hds of whatever tenure for the time being held upon the trusts of this my will or any undivided share or shares thof all such powers of leasg [& sale] & other powers of every description wch may be applicable thto as are by the S. L. Acts, 1882 to 1890, conferred upon tenants for life, & so that all the provons of the sd Acts subsidiary or incidental to such powers, shl be deemed to apply, & to be incorporated in this my will as far as circes may admit, subjt nevs to the provons hrin contd, to the intent that such powers & provons shl operate & take effect in like mner & with all the like incidents, effects, & consequces as if such powers had been conferred by the sd Acts: [And also (to the intent that the addonal or larger powers hinafter contd & all provons subsidiary or incidental thto shl operate & take effect, as far as the case may admit, by way of extension & enlargemt of the powers of & with the aid of the sd Acts, & with all the like incidents, effects, & consequces, as if the same or the like powers were by the sd Acts conferred upon tenants for life & had been hby given to the sd trees by referce thto, & so as to incorporate all subsidiary or incidental powers & provons contd in the sd Acts wch may be applicable, but subjt to the provons hrin contd) the powers hinafter contd (that is to say) &c., *further powers, e.g., to grt leases for longer terms, or to make grts at fee farm rents* (*b*)].

The same for specifically devised estate (*c*).

VIII. I DECLARE that it shl be lful for my trees, *or other donee or donees*, at any time bfe any son or daur of mine shl attn an absolute vested intt in posson in the sd hds & premes

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(*a*) See note (*c*), p. 614; and compare the form at p. 501. This power includes a power of sale where the will does not contain a trust for sale.

(*b*) As to extending the statutory powers, see p. 571. For forms extending the powers, see above, pp. 640 *et seq.* and *infra*, DEVISES IN STRICT SETTLEMENT.

Cases in which S. L. Acts do not apply.

(*c*) See Vol. I., p. 467, note, and the other notes above on the Acts. There are some cases in which a devise is not to vest absolutely until the attainment of a given age, or other event, to which the Acts do not apply; *e.g.*, where the rents during the minority of the donee or other definite term are given to some other person, as in the common case of a devise to an infant with a gift of the rents to the mother during the minority, whether subject to an obligation to maintain the infant or not, in which case the estate of the donee is not in possession so as to come within s. 58 or 59 of the Act of 1882 (and s. 60 also would not apply), and the interim owner of the rents having only a chattel interest, would not have the powers of the Acts; but if there is an absolute trust of the interim rents for the infant's maintenance, this would amount to hinbfe devised, *or*, "durg the minority of the sd ——," *or as the case may be*, to exercise over or in relon to all or any pt of the sd hds & premes all such powers, &c., *as in last form.*

Power to invest in the purchase of land.

IX. I DECLARE that it shl be lful for my trees, at the reqt in writg of the pson or psons of full age, if any, for the time being entled to the income of the sd trust premes, & if there shl be no such pson, at the discron of my trees, to invest any moys arisg from the sale or conversion (wch my trees are hby authorised to make for such ppose) of the sd trust premes, or any pt thof, in the pchase of any manors, messes, lands, or hds in England or Wales, [or Ireland,] of freehd, copyhd, or customary tenure, or held for any term of yrs of wch not less than fifty yrs shl be unexpired at the time of such pchase, or in the enfranchisment of any copyhd or customary hds pchased under the psent power: And that all such hds shl be assured to my trees, their hrs, exs, ads, & assns, accordg to the tenure thof (*d*), upon trust that my trees shl with the consent in writg of the pson or psons for the time being entled to the income of the sd trust premes, if of full age, & if there shl be no such pson, at the discron of my trees, sell such hds & premes (*e*): AND UPON FURTHER TRUST that my trees shl stand possed of the net moys to arise from every such sale after

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giving the infant an estate in possession, so as to bring the case within the Act; see *Re Morgan*, 24 Ch. D. 114. A gift in trust for a person *contingently* on his attaining twenty-one, or other event, does not appear to come within the literal words either of s. 58 (1, ii.), or of s. 59 or 60; but a gift in that form, coupled with a gift of the interim rents for the maintenance of the donee, was held in *Re Morgan* to be within the Acts. Another case not coming within the Acts is the ordinary discretionary trust creating a protected life interest (*Re Atkinson*, 30 Ch. D. 605; 31 Ch. D. 577). See further as to cases not within the Acts, Vol. I., p. 469, note. Where the Acts do not apply, or their application is doubtful, express powers should be inserted; and in the latter case they should, to avoid clashing, be given to the person in whom the statutory powers, if applicable, would be vested; otherwise it will generally be proper in such a case to give them to the trustees.

Variation.

(*d*) When the purchase is authorised to be made with the proceeds of real estate comprised in a general devise in trust for conversion, substitute for the rest of this form (except the proviso at the end for indemnity of trustees in respect of leaseholds), "upon the trusts, & subjt to the powers & provons upon & subjt to wch the same premes wd thenceforth be held, if the same had been comprd in the genl devise & beqt in trust for conversion hinbfe contd."

(*e*) For variations for sale for fee farm rents, see p. 495.

paymt of the costs thof, upon the same trusts, & subjt to the same powers & provons, includg the sd power of pchasg hds, as the moy laid out in the pchase of the hds so sold wd have been subjt to if the same had not been so laid out: AND IN THE MEANTIME (*a*), & until all the sd pchased hds shl be sold my trees shl have power to manage the same premes, & to make allowces to & arrangemts with tenants & others, & to accept surrenders of leases or tenancies: And to demise all or any pt of the same premes, *see leasg powers*, p. 784; And in the meantime, & until all the sd pchased hds shl be sold, my trees shl pay & apply the rents & profits thof to the pson or psons for the pposes & in the mner, to whom & for & in wch the income of the trust premes applied in the pchase of the sd hds wd have been applicable if such pchase had not been made: PROVD ALWAYS that in the event of any leasehd hds being pchased under the trust or power hinbfe contd, my trees shl be entled to be indemnified to the fullest extent out of the trust premes for the time being & the rents & income thof in respt of any liability incurred by them to the paymt of the rents & the pformce of the covts & condons reserved by or contd in the lease under wch such premes are held, or under any covt entd into by my trees on the pchase of the sd hds or orwise in relon thto (*b*).

Power to purchase a house for residence of wife.

X. PROVD ALWAYS, & I empower my trees at any time, at the reqt in writg of my sd wife, to lay out any sum not exceedg £—— arisg from the sale (wch they are hby authorised to effect) of any pt of the sd trust premes, in the pchase of a messe, with suitable outbldgs & offices & other appurts, & with or witht gardens, pleasure grounds, & land to be held thwith, as a residce for her, such messe & premes to be situate in England or Wales, & to be eir freehd, or copyhd, or leasehd,

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Variation.

(*a*) If the will contains a devise of land with powers of management, leasing, &c., the powers may be given by reference as follows:—"AND IN THE MEANTIME & until all the sd pchased hds shl be sold, my trees shl have the like powers of managing, improvg, grantg leases of, & acceptg surrenders of leases & tenancies of the same, condoning & granting licences to commit breaches of covenant as are hinbfe given to them in respect of, &c."

(*b*) See as to this, 2 Dav. Prec., pt. 1, p. 423, note.

held for a term of yrs of wch not less than forty yrs shl be unexpired at the time of pchase, & to be assured to my trees, their hrs, exs, ads, or assns, as the case may require (*c*) upon trust, &c., *trust for sale & trusts of proceeds, as in last form, substitutg* "messe & premes" *for* "hds": AND MY TREES shl until such sale permit my sd wife to occupy such messe & premes, but with power to them, with such consent or at such discron as afsd, to demise the same or any pt thof for any term not exceedg 21 yrs, to take effect in posson or within six calr months from the date of the demise, at rack-rent, the rent recd under any such lease to be pd or applied in the same mner as the income arisg from the proceeds of the sale of the sd messe & premes wd be payable or applicable if the same were sold; *Provo for indemnity of trees in respt of leasehds as in last form.*

Power to trustees to sell house and furniture bequeathed to wife for life (*d*).

XI. I AUTHORISE my trees, at any time durg the life of my wife with her consent in writg, to sell all or any pt of the sd messe & hds, furniture, plate & househd effects hinbfe devised & bequed in trust for her for life; [And I direct that the net moys arisg from such sale shl sink into & form pt of my residy este].

Power to purchase furniture for wife.

XII. PROVD ALWAYS, & I authorise my trees at any time, at the reqt in writg of my sd wife, to lay out any sum not exceedg £—— out of my psonal este in the pchase of furniture, to be held, used, & enjoyed by my wife durg her life, she keepg the same insured agst fire, & in good repair & preservon, reasble wear & tear excepted, & after her death to fall into my residy este. *Provon as to inventory as in form* XXIII *or* XXIV., p. 687, *substitutg* "trees" *for* "exs," *in form* XXIII.

Power to lay out for building, &c. Short form (*e*).

XIII. I AUTHORISE my trees to lay out for bldg any of the hds hinbfe devised in trust for sale, & to erect, build, make & lay down on or under the same any houses, bldgs, roads, paths, sewers, drains, gas-pipes, wires, dynamos, & engines for electric lighting, water-pipes & other convenices, at the expse of my residy este.

(*c*) See p. 787, note (*d*).

(*d*) This power is given to the wife by the S. L. A. as to the house, if it is not the principal mansion house, see s. 10 of the Act of 1890.

(*e*) See the full form in SETTLEMENTS (REAL), p. 623, form LVII.

Power to executors to carry out contracts for sale or purchase of land (*a*).

XIV. I AUTHORISE my exs to complete or rescind any contract for sale or pchase of hds of any tenure wch I may have entd into, & wch may at my death be uncompleted, & to make, insist upon, waive, or submit to any requisons or objons as to title or evidce of title or orwise, whether tenable or not, & eir uncondonally or upon terms, & to make any arrangemts as to givg or receivg compenson for error or misstatemt in the parlars or orwise, & to accept any title not strictly marketable eir with or witht receivg an indemnity, & to give an indemnity agst defects in title by chge upon, or orwise out of any pt of my este, & genlly to act in all respts in relon to any such sale or pchase as if they were sellg or pchasg as benefl owners witht being responsible for loss: [And I direct that all pchase-moy or compenson payable upon any such pchase, & the costs of & incident to the complon of any such sale or pchase, shl be pd out of my residy psonal este, and that the benefl intt in any hds contracted to be pchased by me as afsd, & the legal este in any hds contracted to be sold by me as afsd, shl be included in the genl devise of my real este hinbfe contd & be conveyed accdly, & the proceeds of any such sale as afsd shl be deemed pt of my genl psonal este].

Power to continue loan (*b*).

XV. AND WHAS —— is indebted to me in the sum of £——, for which I hold his promissory note: Now I hby empower my exor to postpone the callg in of such debt, or any other debt wch may be owing to me from the sd —— at the time of my dece, for such period as my exor may think pper, witht takg security for the same, & witht being responsible for loss.

Power to purchase annuity for tenant for life (*c*).

XVI. PROVD ALWAYS, & I hby declare that notwg anythg hinbfe contd it shl be lful for my trees at any time in their absolute discron, with the consent in writg of the sd A., to sell out & dispose of all or any pt of the sd trust premes, & apply the proceeds thof in the pchase in their names from Governmt or any public Co. of an anny for the life of the sd A., & such anny or annies shl be pd to him in the same mner as is hinbfe

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(*a*) As to the adoption of the testator's parol contract, see *Re Harrison*, 34 Ch. D. 214.

(*b*) As to the duty of executors and trustees to call in sums due to the estate, see *Re Brogden*, 38 Ch. D. 546.

(*c*) This power is intended for a case in which the income of a settled fund may be inadequate for the maintenance of the tenant for life and his family.

directed with respt to the income of the sd trust premes wch shl have been so applied in the pchase thof.

Power to discharge incumbrances and to redeem rent-charges, &c., affecting estates (*d*).

XVII. I AUTHORISE my trees to apply any pt or pts of the capl or income of my este, or the proceeds thof, for the redmon or dischge of any quit or other rents, rent-chges, or annies whether perpetual or determinable or other chges or incumbces affectg my real or psonal este or any pt or pts thof, at such time upon such terms & in such mner as they may think expedient, & whether as incident to or connected with a sale of ppty subjt to any such chge or incumbce or any pt of such ppty or not, & any rent-chge, anny, or quit or other rent or other periodical paymt (whether perpetual or for a fixed term, or for life or lives, or orwise) which may at my dece be chged or secd upon or payable out of any pt of my este, may be redeemed or discharged upon the terms of a gross sum or sums of such amt as may be agrd, being paid as the conson for such redmon or dischge, or upon such other terms as my trees may think fit.

Power to executors where lands are specifically devised or settled to keep up gardens, stock farms, &c.

XVIII. I AUTHORISE my exs durg the first yr after my death, or durg such longer period as they may think fit, to keep up the gardens & pleasure-grounds belongg to my mansion house at ——, & also to stock, improve, manage, & cultivate any farm, farms, or woodland wch may be in hand at my death, & for that ppose to employ any pt of my psonal este, with power to delegate all or any of such powers to any pson or psons when & upon such terms as they may think fit witht being responsible for loss. AND I DECLARE that all moys so expended, after deductg the rects, if any, shl be chged on my real este [devised to ——, *or* "in strict settlemt"], with intt thron at the rate of 3 p.c. p.a., payable half-yrly till paymt in favour of my residy este; And that the plants, horticultural instrumts, live & dead stock, & crops wch shl at the expiron

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As to the redemption of rent-charges, &c.

(*d*) See the provisions in the C. A., 1881, s. 45, for the redemption of perpetual rent-charges, quit-rents, &c., in s. 5, for the discharge of incumbrances upon a sale of the land; in the S. L. A., 1882, ss. 5, 24, enabling incumbrances to be shifted to other parts of the estate on a sale, &c.; in the Copyhold Act, 1894, s. 30, for the redemption of rent-charges created for enfranchisement; in the S. L. A., 1887 (and see above, p. 406), with respect to rent-charges under the Lands Improvement Acts; in the S. L. A., 1890, s. 11, as to raising money by mortgage for the discharge of incumbrances; and in 49 & 50 Vict. c. 54, ss. 5, 6, as to redemption of extraordinary tithe.

of one yr from my death, or of such longer period as agrd, be in or about or employed in connectn with the sd gardens, pleasure-grounds, farm, farms, or woods shl become the ppty of the pson who at such expiron shl be entled to the posson or to the receipt of the rents & profits of my real este [devised, &c., *as above*]: AND I DECLARE that my exs shl be free from all responsibility, &c., *as in preceding form.*

DEVISES IN STRICT SETTLEMENT (*a*).

General power of appointment.

I. TO SUCH USES (*b*), upon such trusts [*or*, TO THE USE of, or (*b*) in trust for such psons or pson, for such estes or este, intts or intt], & subjt to such powers & provons as —— shl from time to time by any deed or deeds, revocable or irrevocable, or by will or codl, appt, AND IN DEFAULT of & subjt to any such apptmt, &c.

The same to two persons jointly (*c*).

II. TO SUCH USES, &c., *as above*, as —— & —— shl from time to time by any deed or deeds, revocable or irrevocable, jtly appt, AND IN DEFAULT of & subjt to any such apptmt, &c.

The same to married woman, restricted (*d*).

III. TO SUCH USES, &c., *as above, form* I., as —— the wife of —— shl while discovert by deed, revocable or irrevocable, or, whether covert or discovert, by will or codl, appt, AND IN DEFAULT of & subjt to any such apptmt, &c.

(*a*) Most of the clauses in SETTLEMENTS (REAL) can be readily adapted to wills in strict settlement, with the necessary modifications in the commencement of the clauses and a few other obvious alterations. See also SPECIFIC DEVISES. With reference to the recent legislation affecting the frame of wills in strict settlement, see the notes Vol. I. p. 467, and to SETTLEMENTS (REAL), pp. 570 *et seq.*, and to the various powers.

L. T. A., 1897.

See as to the land vesting in the personal representatives of a person dying after 1897, *ante* p. 690. Where the settlement is created by the will of a sole registered proprietor, it is the duty of his personal representatives to apply for the registration of the person entitled to be registered as proprietor, and for entry of the proper restrictions or inhibitions, L. T. A. 1897, s. 6 (5); L. T. R. 131.

Registered land.

(*b*) If the legal estate is in the trustees, omit the words "TO SUCH USES," or "TO THE USE of, or."

(*c*) For a power to two persons or the survivor, see above, p. 740, form II.

(*d*) The object of this form, of course, is to preclude a binding appointment being made in favour of a husband; see p. 481, note (*f*).

Limitation of a term.

IV. To THE USE of the sd, *trees*, for the term of —— yrs to commce from [my death], witht impeachmt of waste, upon the trusts & subjt to the powers & provons hinafter decld & contd concerng the same, & from & after the determinon of the sd term, & in the meantime subjt thto & to the trusts thof, To THE USE, &c., *or*, *for brevity*, " for the term of —— yrs from —— upon the trusts hinafter decld & subjt thto, To THE USE, &c."

Limitation of a life estate.

V. To THE USE of (*e*) —— & his assns durg his life [witht impeachmt of waste (*f*)], with remr To THE USE (*e*), &c.

Life estate to woman for separate use without anticipation (*g*).

VI. To THE USE of (*e*) the sd, *woman*, & her assns durg her life [witht impeachmt of waste (*f*)] & so that durg [her psnt or any future] coverture the same shl be for her septe use, & she shl not have power to dispose of or chge the rents & profits of the sd premes by way of anticipon, & from & after her death, To THE USE (*e*), &c.

Life estate determinable on bankruptcy, &c. (*h*).

VII. To THE USE of, *trees*, & their hrs, durg the life of K., of, &c. [witht impeachmt of waste (*f*)], UPON TRUST, that if at the time of my death [*or*, *if the life este is in remr*, at the time of this psnt limon takg effect in posson] no (*i*) act or event shl have happened [whether bfe or after my dece,] whby the life intt hby given to the sd K. in the sd hds & premes, or any pt thof, if belongg to him absolutely, would have become vested or chged in favour of some other pson or psons or a corporon, then my sd trees shl permit the sd K. to enter into & remain

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(*e*) If the legal estate is in the trustees, say, " IN TRUST FOR," or " IN TRUST,'' instead of " TO THE USE OF," or " TO THE USE."

As to permissive waste.

(*f*) See p. 578, note (*b*). Add here, if so required, " he keepg the mansion-house at —— in tenantable repair ; " as to these words see *Woodhouse* v. *Walker*, 5 Q. B. D. 405, discussed, *Re Cartwright*, 41 Ch. D. 532.

(*g*) Having regard to the M. W. P. A., 1882, a legal estate or rent-charge may now be limited to a married woman direct for her separate use, without the intervention of a trustee (see above, p. 584, note).

As to life estate determinable on bankruptcy, &c.

(*h*) For a discretionary trust for application of income after bankruptcy, &c., of the tenant for life, for the benefit of him and his family, see p. 580, form VI., and for a trust of income after bankruptcy, &c., where there is no discretionary trust in his favour, see p. 581, form VII. ; and for a general clause determining life estates on bankruptcy, &c., see p. 582, form VIII. These forms may be readily adapted to wills.

(*i*) The form in the text is sufficient, but the form is often used, " bkptcy or alienon or chge, or attempted alienon or charge, or other event."

in the posson, or the rect of the rents & profits, of the sd premes [includg the produce of timber cut in a due & pper course of managemt, & of mines, minls, quarries, & brickfields], durg his life, or until some act, &c., *as in form* v., p. 579.

Life estates to be without impeachment of waste.

VIII. AND I DECLARE that every este for life hinbfe limd shl be witht impeachmt of waste.

Limitation of rent-charge for life (*a*).

IX. TO THE USE that ——, & his assns, shl durg his life rece a yrly rent-chge of £——, witht any dedon except for death duties (*b*), commencg from my death (*c*), to be charged upon & issuing out of all the sd hds & premes hinbfe devised, & to be considered as accruing from day to day, but to be payable by equal qtrly paymts, the first of such paymts to be made at the expiron of three calr months from my death (*c*).

The same to a woman for life or widowhood (*d*).

X. TO THE USE that —— shl durg her life [widowhood] rece a yrly rent-chge of £—— witht any dedon, except for death duties [for her septe use, witht power of anticipon durg coverture], commencg, &c., *as in last form.*

Limitation to sons or daughters of tenant for life successively in tail male or general (*e*).

XI. TO THE USE of (*f*) the first & every other son [daur] of the sd —— successively in remr one after the other, accdg to their respive seniorities in tail [male]. WITH REMR, &c.

Proviso cutting down estates in

XII. PROVD ALWAYS & I declare, that if any pson, to whom an este in tail [male] by pchase in the said premes hinbfe devised is hinbfe limd, is born in my lifetime, such este in tail [male] shl not take effect: AND IN LIEU thof I devise the sd premes TO THE USE of such pson, & his or her assns, durg his or her life [witht impeachmt of waste], with remr TO THE USE of the

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(*a*) For variations where the legal estate is in the trustees, see p. 584, form XII.; as to the omission of the powers of distress and entry, see p. 582, note, and for the forms of such powers, see p. 585; and for a power to the owner of the rent-charge to appoint a term to trustees for raising it, see p. 586.

(*b*) As to these words, see 4 Dav. Prec., p. 77, note; and as to duty, see p. 734, note (*a*).

(*c*) If the rent-charge is in remainder after a life estate, say, "from the death of the sd ——."

(*d*) As to limiting a rent-charge to a married woman without a trustee, see last page, note (*g*).

(*e*) This limitation would include any child dying in the testator's lifetime leaving issue inheritable under the entail, the gift being saved from lapse by the 32nd section of the Wills Act, whether the child is a descendant of the testator or not.

(*f*) If the legal estate is in the trustees, say in this and the following forms of limitations, instead of "TO THE USE OF," "IN TRUST FOR."

first & every other son of such pson, &c., *in tail male, form* XI. [*or, in tail, form* XI., *with remr to the use of daurs in tail, form* XI.]: BUT I DECLARE, that a pson begotten but not actually born at the time of my death shl not be considered as born in my lifetime for the ppose of the provon lastly hinbfe contd (*g*).

tail male by purchase of persons born in testator's lifetime.

Variations for tenants in tail general.

The same where estates in tail male and in tail general are limited to the same persons.

XIII. PROVD ALWAYS & I declare, that if any pson to whom estes in tail male & also in tail genl by pchase in the sd premes hinbfe devised are hinbfe limd, is born in my lifetime, such respive estes shl not take effect: AND IN LIEU of such este in tail male, I devise the sd premes TO THE USE of such pson, & his or her assns, durg his or her life [witht impeachmt of waste], with remr TO THE USE of the first & every other son of such pson, &c., *in tail male, form* XI.: AND IN LIEU of such este in tail genl, I devise the sd premes TO THE USE of the first & every other son of such pson successively, &c., *in tail genl, form* XI., with remr TO THE USE of the first & every other daur of such pson successively, &c., *in tail male, form* XI., with remr, *to daurs successively in tail genl, form* XI.: *Add provo at end of last form.*

Limitation to daughters of tenant for life as tenants in common in tail general, or tail male, with cross remainders.

XIV. TO THE USE of all the daurs of the sd —— in eql shares as tenants in common in tail [male]: AND IF & so often as there shl be a failure of issue [male] of any such daur, then as well as to her origl share as to any share or shares wch shl have accrued to her or her issue [male] by virtue of this psnt limon, TO THE USE of the others or other of such daurs in eql shares as tenants in common in tail [male]: AND IF there shl be a failure of issue [male] of all such daurs but one, or if there shl be only one such daur, then as to the entirety of the same premes, TO THE USE of such one or only daur in tail [male], WITH REMR, &c.

The same. Short form.

XV. TO THE USE of all the daurs of the sd —— as tenants in common in tail [male] with cross remrs betn such daurs as to their origl & accruing shares as tenants in common in tail [male], & if there shl be but one such daur then as to the entirety of the same premes to the use of such one or only daur in tail [male] with remr, &c.

(*g*) Probably the clause "But I declare, &c.," is superfluous, *Reeve* v. *Long*, 1 Salk. 227, discussed, *Doe* v. *Clarke*, 2 H. Bl. 399.

Proviso that limitation to daughters as tenants in common in tail shall include daughter dying in testator's lifetime (*a*).

XVI. PROVD ALWAYS & I declare, that if any daur of the sd —— shl have died in my lifetime, & any of her issue [male] shl survive me the devise to the daurs of the sd —— hinbfe contd shl take effect in the same mner as if such daur had died immedly after me, & so that the hrs [male] of the body of such daur shl take the like share or shares or este origl or accruing in the sd premes wch such daur wd have taken had she survived me, & with the like remrs over on failure of her issue [male].

Limitations in tail general by reference to limitations in tail male.

XVII. TO THE USE that all & every the psons or pson, to whom estes in tail male by pchase are hinbfe limd, may sevlly & successively take estes in tail genl in remr one after the other in the same order & priority in wch they resply take estes in tail male, WITH REMR, &c.

Limitations in remainder by reference.

XVIII. WITH REMR TO THE USE of every son & daur born in my lifetime of the sd ——, & the issue of each such son & daur, for the same estes & in the same order & mner as the sd premes are hinbfe limd to every son & daur of mine, & his & her respive issue, with remr TO THE USE of every son & daur born after my death of the sd ——, & the issue of each such son & daur, for the same estes & in the same order & mner as the sd premes are hinbfe limd to the use of every son & daur born after my death of every son & daur of mine, with remr TO THE USE of —— & his issue for the same estes & in the same order & mner as the sd premes are hinbfe limd to the sd —— & his issue, WITH REMR, &c.

Limitations in strict settlement to testator's sons and their issue male (*b*).

XIX. TO THE USE of my eldest son A., durg his life, with remr TO THE USE of his first & every other son actually born in my lifetime sevlly & successively accdg to seniority durg their respive lives, with an immediate remr after the death of each such grandson of mine TO THE USE of his first & every other son sevlly & successively accdg to seniority in tail male, with remr after the dece of all the sons of the sd A. born in my lifetime & the default or failure of such issue male as afsd of all

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(*a*) The issue inheritable under the entail of a daughter dying in the testator's lifetime would be excluded by the last two clauses, the gift being to a class, see p. 750, note; but the addition of this proviso seems sufficient to include a daughter so dying, even before the date of the will, having regard to the Wills Act, s. 32; see p. 794, note (*e*); and 1 Jarm. Wills, p. 323, and cases in notes (*t*) and (*u*).

(*b*) For an instance of limitations to the second and other sons, excluding the eldest son, see *Locke* v. *Dunlop*, 39 Ch. D. 387.

such sons TO THE USE of the sons of the sd A. born after my death sevlly & successively accdg to seniority in tail male, with remr TO THE USE that my sons B., C., & D., & every son of mine hrafter born, & their respive sons & grandsons, shl take estes similar to & with the same order & priority as those hinbfe limd to the use of the sd A., his sons & grandsons, BUT so that the elder of such sons of mine & his sons & grandsons shl always be preferred to the yor of such sons of mine, & his sons & grandsons, in the same mner as if the uses hinbfe limd to or in favour of the sd A., his sons & grandsons, were repeated with the substiton of the name of each of my sd sons in succon accdg to seniority, for the name of the sd A., WITH REMR, &c.

XX. TO THE USE that all my daurs & their respive sons [& grandsons] shl take estes similar to & with the same order & priority as those hinbfe limd to the use of my sd son A., his sons [& grandsons], BUT so that the elder of such daurs of mine, & her sons [& grandsons] shl always be preferred to the yor of such daurs of mine, & her sons [& grandsons], in the same mner in all respects as if the uses hinbfe limd to or in favour of the sd A., his sons & grandsons, were repeated, with the necy verbal alterons & the substiton of the name of each of my daurs in succon accdg to seniority, for the name of the sd A., WITH REMR, &c.

Limitations to testator's daughters and their issue male, in remainder immediately after limitations to the sons and their issue male.

XXI. TO THE USE that each of my great grandsons (grandsons of the sd A.) to whom estes in tail male are hinbfe limd, shl take an este in tail genl in the same order & priority as the este in tail male hinbfe limd to him, with remr TO THE USE of all my great granddaurs (daurs of the sons born in my lifetime of the sd A.), sevlly & successively, in remr one after the other in tail male, so that the daurs of an elder son of the sd A. shl always be preferred to the daurs of a yor son of the sd A., & shl, as betn themselves, take in order of seniority, with remr TO THE USE that each of my sd great granddaurs (daurs

Limitations in remainder to the issue general of testator's sons where there are previous limitations exhausting the testator's male issue (*c*).

(*c*) In the form in the text, males are preferred to females, and females claiming through males of a more remote generation are preferred to those claiming through males of a nearer generation. Sometimes the testator's daughters and their male issue are preferred to the female issue of the testator's sons; in other words, males are preferred to females, and females claiming through males of a nearer generation are preferred to those claiming through

As to order of limitations in tail as between males and females.

of the sons born in my lifetime of the sd A.) shl take an este in tail genl in the same order & priority as the este in tail male hinbfe limd to her with remr TO THE USE of the first & other daurs of the sd A. born in my lifetime, sevlly & successively one after the other, accdg to seniority, durg their respive lives, with an immediate remr after the death of each such granddaur of mine TO THE USE of her first & every other son sevlly & successively in remr one after the other accdg to seniority in tail male, with remr after the death of all such daurs of the sd A. & the default or failure of their issue male, TO THE USE of all my great grandsons (sons of the daurs born in my lifetime of the sd A.), sevlly & successively, in remr one after the other in tail genl, so that the sons of an elder daur of the sd A. shl be preferred to the sons of a yor daur of the sd A., & shl, as betn themselves, take in order of seniority, with remr TO THE USE of all my great granddaurs (daurs of the daurs born in my lifetime of the sd A.), sevlly & successively in remr one after the other in tail male, so that the daurs of an elder daur of the sd A. shl be preferred to the daurs of a yor daur of the sd A., & shl, as betn themselves, take in order of seniority, with remr TO THE USE that each of my great granddaurs (daurs of daurs born in my lifetime of the sd A.), shl take an este in tail genl in the same order & priority as the este in tail male hinbfe limd to her, with remr TO THE USE of the sons of the sd A. born after my death, sevlly & successively in remr one after the other accdg to seniority in tail genl, with remr TO THE USE of the daurs of the sd A. born after my death, sevlly & successively in remr one after the other accdg to seniority in tail male, with remr TO THE USE of the daurs of the sd A. born after my death, sevlly & successively in remr one after the other accdg to seniority in tail genl, with remr TO THE USE that the sons, grandsons, daurs, & granddaurs of the sd B., C., & D., & of every son of mine hrafter born, shl take estes

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males of a more remote generation. In this latter case, for consistency, the form in the text should be altered, so as to make the estates in tail male of the females precede the estates in tail general of the males of the same generation. But it is believed that in practice this nicety is seldom attended to; and it is apprehended that, in the absence of special instructions, the form in the text may be used, although the limitations to the daughters of the testator, and their male issue (form XX.), immediately follow the limitations to his sons and their male issue (form XIX.).

similar to & with the same order & priority as those hinbfe limd to the use of the sons, grandsons, daurs, & granddaurs of the sd A. in remr after the default or failure of issue male of all my sons [(*a*) & daurs], BUT SO that the sons, grandsons, daurs, & granddaurs of an elder son of mine shl always be preferred to the sons, grandsons, daurs, & granddaurs of a yor son of mine, in the same mner as if the uses hinbfe limd to or in favour of the sons, grandsons, daurs, & granddaurs of the sd A. in remr as afsd were repeated, with the substiton of each of my sons in succon accdg to seniority, for the sd A., WITH REMR, &c.

Limitation to testator's daughters and their issue, by reference to the limitations to his sons and their issue (*b*).

XXII. TO THE USE that all my daurs & their respive issue shl take estes similar to & with the same order & priority as those hinbfe limd to the use of my sons & their respive issue in the same mner in all respts as if the uses hinbfe limd to or in favour of my sons & their respive issue were repeated, with the necy verbal alterons & the substiton of each of my daurs in succon accdg to seniority, for my sons resply, WITH REMR, &c.

Limitations to issue of testator's daughters by reference to limitations to issue of his sons.

XXIII. TO THE USE that the issue of my respive daurs in succon, accdg to the seniority of such daurs, shl take estes similar to & with the same order & priority as those hinbfe limd to the use of the issue of my respive sons in remr after the default or failure of issue male of all my daurs, in the same mner in all respts as if the uses hinbfe limd to or in favour of the issue of my respive sons in remr as afsd were repeated with the necy verbal alterons & the substiton of my daurs for my sons, WITH REMR, &c.

Successive limitations in fee by way of executory devise (*c*).

XXIV. TO THE USE of my eldest son who shl survive me, his hrs & assns, & in case he shl die under the age of 21 yrs TO THE USE of my other sons who shl survive me, successively by way of executory limon accdg to their respive seniorities, & their respive hrs & assns, & so that if any such son shl die

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(*a*) The words in brackets will be inserted if the limitations to the testator's daughters and their issue male, form XX., precede the limitations in remainder to the issue general of the testator's sons.

(*b*) This form is intended to follow forms XIX. and XXI. If form XX. is inserted, form XXIII. will be substituted for form XXII.

(*c*) Limitations of this kind are often troublesome to frame, and are less convenient than an entail.

under the age of 21 yrs his este shl be divested & go to my next son, but, if I shl leave no son survivg me who attns the age of 21 yrs, then To THE USE, &c.

The like with ulterior limitations to vest at 25 as far as law permits, with provision for issue and portions for younger children (*a*).

XXV. IN TRUST for my eldest son ——, if he shl survive me & attain the age of 25 yrs, his hrs & assns, but in case he shl die in my lifetime or shl survive me & aftwds die under that age, then IN TRUST for the issue (if any) of my sd eldest son in mner follg, namely, IN TRUST for the eldest or only son of my sd eldest son, who shl be born in my lifetime & shl survive me & attn the age of 25 yrs, his hrs & assns, And in default of any such son, then IN TRUST for the eldest or only son of my sd eldest son who shl be born after my dece & shl attn the age of 21 yrs, his hrs & assns, And in default of any such son, then IN TRUST for the eldest or only daur of my sd eldest son who shl be born in my lifetime & shl survive me & attn the age of 25 yrs or marry under that age, her hrs & assns, And in default of any such daur, then IN TRUST for the eldest or only daur of my sd eldest son who shl be born after my dece & shl attain the age of 21 yrs or marry under that age, her hrs & assns; PROVD ALWAYS, that in case my sd eldest son shl die bfe attng a vested intt as afsd, leaving issue more than one child, then the sd hds shl stand chged with the paymt (to be raised by mtge or orwise by my trees) of the sum of £—— to each & every yor child of my sd eldest son (meang thby a child other than the child who shl become entled to the sd hds under the trusts hinbfe decld, who if born in my lifetime shl attn the age of 25 yrs, or if born after my dece shl attn the age of 21 yrs, or being a daur shl marry) with an allowce of such amt not exceedg intt on £—— at the rate of 4 p.c. p.a. as my trees in their discron shl think fit from time to time to raise, to be applied by them for or towards the mtce & educon of or to be pd to each such yor child, or each child who shl for the time being be presumptively a yor child until his or her portion shl become raisable & payable, And in default of any such issue of my sd eldest son, then IN TRUST for my second son if he shl survive me & attn the age of 25 yrs, his hrs & assns, And in case he shl die in my lifetime or shl survive me & aftwds

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(*a*) Limitations of this kind are often troublesome to frame, and are less convenient than an entail.

die under the age of 25 yrs, then upon the like trusts in favour of the issue of my sd second son & the like provons for his yor chln, if any, as are hinbfe decld in favour of the issue of my sd eldest son, And in default of such issue, then IN TRUST for my daur if she shl survive me & attn the age of 25 yrs or marry under that age, her hrs & assns, & in case she shl die in my lifetime, then upon the like trusts in favour of the issue of my sd daur & the like provons for her yor chln, if any, so far as the same shl be capable of takg effect, as are hinbfe decld in favour of the issue of my sd eldest son, And in default of such issue, or if my sd daur shl survive me & aftwds die under the age of 25 yrs & witht havg been married, then IN TRUST to permit my sister —— & her assns to possess & enjoy or rece the rents & profits of the sd hds & premes durg her life for her septe use, witht power of anticipon, & from & after her death, Upon the like trusts for the sons & daurs resply of my sd sister successively accdg to seniority & their respive issue, & with the like preferce of sons & their issue to daurs & their issue, & the like preferce of an elder son or daur (as the case may be), & his or her issue to a yor son or daur (as the case may be), & his or her issue as are hinbfe contd in favour of my own respive chln & their respive issue, save & except that in the case of any child or grandchild of my sd sister who may be born after my death, the age of 21 shl in all cases be substituted for that of 25 as the period of vestg.

Limitation to issue of tenant for life, as he shall appoint. Short form (b).

XXVI. TO THE USE of all or any of the chln [or remoter issue] of the sd ——, for such estes or este, intts or intt, & if more than one, in such shares & mner as the sd —— shl by deed revocable or irrevocable, or by will or codl appt, AND IN DEFAULT of & subjt to any such apptmt, TO THE USE, &c.

Ultimate limitation to testator's heirs (c).

XXVII. TO THE USE of my own rt hrs.

Ultimate limitation

XXVIII. TO THE USE of the pson or psons who at the time of the failure or determinon of the precedg uses, & when this psnt ultimate limiton shl, or but for the existce of any precedg este by the courtesy or in dower, or of any term of yrs, wd take to person who shall be testator's right heir at a particular time.

(b) The full form may readily be adapted from SETTLEMENTS (REAL), p. 587, form XXIII.; and see also the form of power to appoint to any son in tail, p. 587. As to the question of perpetuity, see p. 587, note (g).

(c) See p. 589, note (d); and see the variation in form XXVI., p. 589.

effect in posson, shl be my hr-at-law (*a*) & his her or their hrs & assns, such psons, if more than one, to take as tenants in common in the shares in wch they wd have taken by descent from me had I died immedly before the time at wch such psons are to be ascertained.

Trusts of term to raise annuity.

Variation where the annuity is for a woman without anticipation (*b*).

XXIX. AND I DECLARE that the sd hds & premes are hby devised to the sd, *trees*, for the sd term of —— yrs, UPON TRUST that the sd, *trees*, or the survor of them, shl, durg the life of the sd ——, by & out of the rents & profits of the sd premes, or by the sale of timber or minls, or by mtge of the sd premes, or any of them, for all or any pt of the sd term, or by all or any of the means afsd, raise the annl sum of £—— commencg from my death, clear of all dedons except death duties, & shl pay the same to the sd —— [so that durg coverture the same shl be for her septe use witht power of anticipon], such annl sum to be considered as accruing from day to day, but to be pd by eql qtrly paymts, & the first of such paymts to be made at the expiron of three calr months from my death, if the sd —— shl then be livg [& (*c*) shl also retain or pay all such moys as shl be required to defray & satisfy the costs & expses incurred in pformg any of the trusts of the sd term or orwise in relon thto, & shl permit the pson or psons for the time being entled in revon immedly expectant upon the same term to the premes thrin comprd to rece the surplus of the rents & profits of the same premes after paymt & satisfon of the annl sum & costs & expses afsd].

Trusts of term for further securing rent-charge or charges (*d*).

XXX. AND I HBY DECLARE that the sd hds are hby devised to the sd, *trees*, &c., *continue as in* SETTLEMTS (REAL), p. 593, *form* XXIX.

Trusts of term for raising

XXXI. AND I DECLARE that the sd premes are hby devised to the sd *trees*, for the sd term of 1000 yrs upon trust, if I shl have any yor child or chln (meang thby any child or chln who survive me & being a son or sons attn the age of 21 yrs, or being a daur

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(*a*) See *Evans* v. *Evans*, [1892] 2 Ch. 173, discussed 9 Law Q. R. 2, as to the user of the word "heir" in the singular.

(*b*) For a power to trustees to accept other security or release part of the estates from jointures, &c., which can readily be adapted to a will, see form XLVI., p. 609.

(*c*) The part in this bracket may be omitted, if a general clause, as at p. 602, form XXXV., is inserted.

(*d*) This clause will not now be often required, see p. 593, note.

portions for testator's younger children (*e*).

or daurs attn that age or marry, [or who die in my lifetime leavg issue survivg me,] other than any son or sons of mine who bfe his or their resply attng the age of 21 yrs shl become (*f*) entled [or any daur or daurs who bfe her or their resply attng that age or marrying shl become entled] in posson under this my will to the sd hds & premes for the first este for life), then the sd, *trees*, or the [survors or] survor of them (*g*), shl by mtge of the sd premes or any pt thof for all or any pt of the sd term, or by & out of the rents & profits thof or any pt thof, or by the sale of timber or minls, or by all or any of the means afsd, raise the sum of £—— [free from death duties] for the portion of each yor child of mine, & pay the same to him or her, or his or her repves, & upon further trust that the said trees or tree shl by any such means as afsd raise such annl sum not exceedg £—— [free from death duties] as they or he shl think fit for the mtce, educon, or benefit of each child for the time being entled in expectcy to a portion, and apply the same accdly, eir directly or by paying the same to the gdian or gdians of such child witht seeing to the applicon thof; AND I authorise the sd trees or tree to raise, by any such means as afsd, any sum or sums not exceedg in the whole a moiety of the expectant portion of any child of mine, & to apply the same at their or his discron for the advancemt or benefit of such child, *Advancemts by testor in his lifetime to be brought into hotchpot*, p. 757, *form* XXIX., *mutatis mutandis*; I further authorise the sd trees or tree at their or his discron, when any portion or portions shl be payable, *continue power to raise total sum for portions bfe they are all payable*, p. 596; [(*h*) AND subjt to the trusts afsd & to the rt of the sd trees or tree to raise by any of the means afsd all costs

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(*e*) In this form a fixed sum is given to each child. The form at p. 593, where a sum either fixed or dependent on the number of the children is given to the children as tenants in common, can be adapted. For a form of power to trustees to accept other security or release part of estates from portions, see form XLVI., p. 609.

(*f*) As to the insertion here of the word "indefeasibly," and as to variations for name and arms or other shifting clauses, see p. 594, note.

(*g*) In this form and throughout the strict settlement forms, the expressions "my trees," or "the sd trees or tree," may be used, as in other wills, care being taken to avoid confusion if there is more than one set of trustees; see the declaration as to the devolution of the trustees' powers, below, TRUSTEE CLAUSES.

(*h*) See p. 802, note (*c*).

& expses incurred in the exon of the trusts of the sd term, the rents & profits of the premes comprd in such term, or so much thof as shl not be required for the pposes afsd, shl be taken & reced by the pson or psons entled to the sd premes in revon expectant on the same term].

Trusts of term for raising portions for children of another person.

XXXII. AND I HBY DECLARE that the same premes are hby devised to the sd, *trees*, for the sd term of 1000 yrs, UPON TRUST if there shl be any yor child or chln of the sd ——, meang thby, &c., *continue as in* SETTLEMTS (REAL), p. 593, *form* XXX., *mutatis mutandis*.

Trusts of term to pay debts and legacies (*a*).

XXXIII. AND I HBY DECLARE that the sd premes are hby devised to the sd, *trees*, for the sd term of —— yrs, UPON TRUST that the sd, *trees*, shl by mtge of the sd premes, or any pt thof, for all or any pt of the sd term, or by the sale of timber or minls, or by & out of the rents & profits thof, or by all or any of such means, raise in aid & in case of deficiency of, *or*, "in exoneration of," my psonal este, such sum or sums of moy as may be suffit to dischge my funl & testy expses & debts & the legacies given by this my will or any codl thto, & the duty on any legacies given free of duty, & the este & succon duties leviable at my death on any sum of moy whether gross or annual hby chgd on or made payable out of the sd premes & given free from death duties, & shl pay & apply such moys accdly; AND no mtgee or other pson advancg or paying such moys, or any pt thof, shl be concerned to inquire [(*b*) as to the deficiency of my psonal este, or] whether any moy is actually wanted for the pposes afsd: [AND FURTHER, that it shl be lful for the sd trees or tree to raise any moys under the trusts of the sd term bfe it shl be ascertained whether any & what sum will be wanted, & to apply the same for the pposes afsd]: AND FURTHER, that if any moy shl be raised under the trusts of the sd term wch shl not be required for the pposes afsd, the sd trees or tree [(*c*) shl pay the same to the trees or tree for the time being authorised to rece & give a dischge for moys arisg

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(*a*) See also the form of power to raise money to pay debts, &c., p. 735, and the trusts of a term for raising money for various purposes, p. 600.

(*b*) The clause in these brackets will be omitted if the personalty is to be exonerated.

(*c*) The words in this bracket will be omitted, if the trustees of the term are likewise the general trustees.

from a sale of the sd hds, who] shl apply the same as if arisg from a sale of such hds, *add diron as to costs & surplus rents, as in form* XXXI., *unless a genl clause for that ppose is inserted.*

Power to jointure.

XXXIV. PROVD ALWAYS & I declare, that it shl be lful for each [male] pson hby made [legal or equitable] tenant for life of the sd premes, eir bfe or after he shl become entled, &c., *continue power to jture*, p. 603, *form* XXXVII. (*d*).

Power to female tenants for life to limit rent-charges to husbands.

XXXV. PROVD ALWAYS & I declare, that it shl be lful for each female hby made [legal or equitable] tenant for life of the sd premes, eir bfe or after, *continue power*, p. 603, *form* XXXVIII. (*d*).

Power to charge portions.

XXXVI. PROVD ALWAYS & I declare, that it shl be lful for every pson hby made [legal or equitable] tenant for life of the sd premes [*if other provon is made for the yor chln of the first tenant for life, say,* "other than the sd, *first tenant for life*"], eir bfe or after, &c., *continue as in* p. 606, *form* XL., *mutatis mutandis* (*d*).

Power to trustees to manage during minorities.

XXXVII. PROVD ALWAYS & I declare, that if any pson, &c., *continue as in form* XLVII., p. 609.

Clause supplemental to and modifying statutory minority clause (*e*).

XXXVIII. PROVD ALWAYS & I hby declare, that the sd, *trees by name*, shl be the trees of this my will for the pposes of the 42nd section of the C. & L. of P. Act, 1881, *continue as in form* XLIX., p. 614, *mutatis mutandis.*

Power to lease for 21 years (*f*).

XXXIX. AND I DECLARE that it shl be lful for the sd —— durg his life, & for the sd, *trees*, or the [survors or] survor of them durg the minority of any son [or daur] of the sd ——, who, if of full age, wd be entled to the posson or rect of the rents & profits of the sd hds & premes [or of any undivided

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(*d*) Add also forms XLI., p. 606 (see notes thereto), and XLII., p. 607, if appropriate, *mutatis mutandis.* For a form of power to female tenants for life to appoint life interests to surviving husbands, see p. 607, form XLIII. and note.

(*e*) As to the minority clause, and the statutory power, see p. 610, note; and see the next form. As to the form of trust where the settlement contains a shifting clause, see 3 Dav. Prec., 1200.

As to various powers of leasing, &c.

(*f*) This and the following express powers of leasing, sale, &c., may, and ought to be omitted where the S. L. Acts apply; see SETTLEMENTS (REAL), p. 572, note, and note on general arrangement of powers, p. 615. For other forms of express powers of leasing, &c., see SETTLEMENTS (REAL), p. 614 *et seq.;* power to grant building and improving leases, p. 617; power to grant mining leases, p. 619; power to grant leases of easements, p. 621;

share or shares thof (*a*)] (*b*) to demise (*c*), &c., *as in form* L., p. 614.

The same where there are various limitations for life, and in tail or fee.

XL. AND I DECLARE that it shl be lful for (*d*) every pson hby made tenant for life of the sd hds hinbfe devised when he [or she] shl be entled to the posson or the rect of the rents & profits of the same premes, & also for the sd, *trees*, or the [survors or] survor of them, durg the minority of any pson who under the limons hinbfe contd, if of full age, wd be entled, &c., *continue as in precedg form.*

Commencement of powers of sale and exchange, enfranchisement, partition, &c. (*e*).

XLI. AND I HBY DECLARE that it shl be lful for the sd, *trees*, or the [survors or] survor of them, durg the life of the sd ——, with his consent in writg, & after his dece, & durg the minority of any son [or daur] of the sd ——, who, if of full age, wd, for the time being, be entled to the posson or rect of the rents & profits of the sd hds & premes [or of any undivided share or shares thof (*f*)] at the discron of the sd trees or tree for the time being to, &c. (*g*).

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power to accept surrenders of leases and to take value of surrendered lease into account on granting a renewal, p. 621; to make grants in fee on chief rent, p. 622; power to lay out property for building, p. 623; power to release restrictive or building covenants and to apportion rents or rent-charges, p. 625; power to enter into contracts for leases, &c., p. 626; power to accept leases of easements, p. 626; power to grant licences, to copyholders, &c., p. 627; proviso to be added to powers of leasing, &c., where there is a limitation to tenants in common, p. 636; all of which forms may be readily adapted to a will. For forms incorporating or extending the powers of the Settled Land Acts, see pp. 639 *et seq.* and *infra.*

(*a*) See note (*f*), p. 807.

Several leasing powers.

(*b*) If the will contains several leasing powers, it may be found convenient to continue from this point as follows:—" to exercise over the whole or any pt or pts of the same premes [or accdg to circes, of any such undivided share or shares thof,] the sevl powers follg, that is to say, FIRST, a power to demise, &c., *as in the text:* SECONDLY, a power to demise, &c."

(*c*) See p. 616, note (*b*), as to the use of the word "demise."

(*d*) For variations where the form of name and arms clause, p. 589, is used, see p. 617, note (*d*).

As to various powers of sale, &c.

(*e*) As to the omission of these powers in reliance on the S. L. Acts, see the notes to SETTLEMENTS (REAL), pp. 570 *et seq.*; 628 *et seq.* If express powers are given, the forms may be adapted from SETTLEMENTS (REAL), p. 630 *et seq.*, with merely verbal alterations; and see note as to general arrangement of powers, p. 615. See also the forms of powers to partition, p. 630; to enfranchise, p. 631; to grant easements, p. 632; to purchase easements, p. 632; to renew leases, p. 633, and to raise money on mortgage, p. 633; and power in settlement of undivided share to concur with co-owners in selling, &c., p. 635.

The same where there are various limitations for life and in tail.

XLII. AND I HBY DECLARE that it shl be lful for the sd, *trees*, or the [survors or] survor of them, durg the life of any pson (*h*) who, under the limons hinbfe contd, shl for the time being, be benefly entled to the posson or rect of the rents & profits of the sd hds & premes as tenant for life, with his [or her] consent in writg, & also durg the minority of any pson who, under the limons hinbfe contd, wd, if of full age, be for the time being, benefly entled to the posson or rect of the rents & profits of the same premes [(*i*) or of any undivided share or shares thof] as [tenant for life or] tenant in tail [male or in tail] by pchase, at the discron of the sd tree for the time being, to, &c.

Clause giving express powers of leasing, sale, &c., by reference to S. L. Acts.

XLIII. AND I DECLARE that it shl be lful for the sd, *donee or donees*, durg the lifetime of the sd A., *or other specified period*, to exercise over or in relon to all or any of the hds of whatever tenure hby devised or for the time being subjt to the subsistg uses or trusts of this my will, all such powers, &c., *as in form* LXXXII., p. 639, *or form* LXXXVI., p. 640, *mutatis mutandis.*

Addition where larger powers are given (*i*).

XLIV. AND I DECLARE that all or any powers contd in this my will for pposes more extended or other than the powers of the S. L. Acts, 1882 to 1890, whether given to the pson or psons in whom such statutory powers shl for the time being be vested or to my trees, & all provons subsidiary or incidental to or connected with such respive powers shl operate & take

Provision as to extension of powers of S. L. Acts (*i*).

(*f*) The words in brackets to be inserted where there is a limitation to tenants in common. See the provision at p. 636, for this case.

Several powers.

(*g*) If there are several powers given to the trustees, it may be convenient to continue as follows:—"To exercise the sevl powers follg, that is to say: FIRST, a power to, &c.; SECONDLY, a power, &c."

(*h*) See note (*d*) preceding page.

As to powers of S. L. Acts and extended powers.

(*i*) Express powers, if needed at all, are best given by a comprehensive clause in this way (see p. 572, note). For a declaration that express powers are to operate independently of the Acts, see p. 639; see also form XLV., *infra*, providing for the case of there being no person having the powers of the Acts, the insertion of which may sometimes be desirable. If the statutory powers are extended, whether express powers are given by reference to the Acts, as in the text, or the powers of the Acts are relied on, the forms in SETTLEMENTS (REAL), pp. 641 to 650, forms LXXXVII. to CVI., will for the most part be applicable, with merely verbal alterations to adapt them to a will; and in that case the addition in brackets at the end of form LXXXII., p. 639, or form LXXXIV., p. 640, or the next form may be inserted, as convenient. The clauses, *infra*, p. 817, having reference to the Acts should generally be inserted.

effect as far as the case may admit by way of extension & enlargemt, &c., *as in form* LXXXIV., p. 640.

Provision for the case of there being no person having the powers of the Acts (*b*).

XLV. AND I DECLARE that in case at any time, & so long as durg the subsistce of the settlemt hby made, or of any chge of a jture created by this my will, or by the exercise of any powers hby given, in favour of any pson livg at my death, or of a portion created by this my will or by the exercise of any power hby given wch shl not for the time being be raisable & payable there shl be no pson in whom the powers of the S. L. Acts, 1882 to 1890, shl for the time being be vested [or no such pson competent to exercise the sd powers], it shl be lful for the sd trees or tree in their or his absolute discron to exercise over or in relon to the hds hby settled or for the time being subjt to the subsistg uses or trusts hrof, the powers of a tenant for life in posson under the sd Acts, & all such extended & enlarged powers as are hby conferred, & so that all the provons of the sd Acts wch are subsidiary or incidental to or connected with the powers thrin contd, shl, as far as may be, apply & take effect with respt to the powers hby given to the sd trees or tree.

Charge of jointure and portions in exercise of power in settlement.

XLVI. *Recite settlemt givg powers to chge jture & portions.* Now in exercise of the power given or reserved to me for this ppose by the sd settlemt, & of every or any other power in this behalf me enablg, I do hby limit & appt to the use of my wife —— & her assns durg her life, in case she shl survive me, a yrly rent-chge of £—— by way of jture, & so that in case of her marryg again the same shl be for her septe use witht power of anticipon, to be chged upon & issuing out of all & singr the hds & premes comprd in the sd settlemt & thrin called the T. este, situate in the coy of —— afsd (subjt & witht prejudice to the chges, powers, & uses now subsistg thrin & havg priority to my este for life), to be considered as accruing from day to day, but to be payable by eql qtrly paymts witht any dedon [except] for death duties the first of such paymts to be made at the expiron of three calr months from my death, if my sd wife shl then be living: AND I HBY further appt & declare that my sd wife & her assns shl have, *&c., gift of powrs of distress, &c., by refce to Convcg Act,* 1881, *supra,* p. 586: AND in exercise of the power given or reserved to me

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(*b*) See p. 640, note (*b*).

for this ppose by the sd settlemt, & of every, &c., I do hby chge all & singr the sd hds & premes called the T. este comprd in the sd settlemt (subjt & witht prejudice as afsd, & subjt to the sd rent-chge hinbfe appted to my sd wife & to the powers & remedies for recoverg & securg the same), with the paymt of the respive sums next hinafter mentd [free from death duties] as & for the portion or portions of my child or chln (other than any son or sons who bfe attaing the age of 21 yrs shl become entld under or by virtue of the sd settlemt to the sd T. este for the first este in tail male, or any daur or daurs who, bfe attaing that age or marrying, shl become indefeasibly (*c*) entled under the sd settlemt to the sd T. este for the first este in tail), that is to say, if there shl be but one such child (other than as afsd) who shl attain a vested intt as hinafter provd in such portion moy the sum of £——, & if there shl be two or more such chln (other than as afsd) the sum of £—— to be an intt or intts vested in & payable to such child or chln (other than as afsd) on his or their resply attaing the age of 21 yrs, or in the case of a daur or daurs marrying, & if more than one, in eql shares, & to carry intt at the rate of 4 p.c. p.a. from the time when the same resply shl become payable until paymt, & in case any child of mine for whom a portion is hby chged shl at my dece be under the age of 21 yrs, & in the case of a daur unmarried, I hby further chge the sd T. este (subjt & witht prejudice as afsd) with the paymt of such sum or sums not exceedg for any such child or chln one-fourth pt of his, her, or their respive, expectant, or presumptive portion or portions as the trees or tree for the time being of the term of yrs hinafter limd shl at any time or times deem pper to be raised for the advancemt or benefit of any such child or chln, & to be applied by such trees or tree for that ppose in such mner as they or he shl think fit, & so that any sum so made raisable for the advancemt of any such child shl not be taken into acct in estimatg the total sum raisable for portions as afsd, unless the child advanced shl become entled to a portion, or, but for this psnt provon, more than the sum of £—— in the whole wd be raisable for such portions. AND in the event afsd of any such child being under the age of 21 yrs, & in the case of a daur unmarried, I hby also

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(*c*) See p. 594, note (*a*).

chge the sd T. este (subjt & witht prejudice as afsd) with the paymt from & after my dece of such annl sum or sums of moy (not exceedg what the intt of the then expectant or presumptive portion of such child wd amt to after the rate of 4 p.c. p.a.) as the sd trees or tree shl deem sufft & pper for the mtce & educon of every or any child for the time being entled in expectcy or presumptively to a portion as afsd, such annl sums to be clear of all dedons except death duties, & to be pd or applied in such mner & at such times as the sd trees or tree shl think fit, & they or he may eir themselves or himself so apply the same or may pay the same to the gdian or gdians of such child or chln for the ppose afsd witht seeing to the applicon thof: AND in exercise of the power given to me for this ppose by the sd settlemt, & of every, &c., I do hby appt all & singr the sd hds & premes comprd in the sd settlmt, & thrin called the T. este (subjt & witht prejudice as afsd), unto & to the use of, *trees*, for the term of 500 yrs to commce from my death, UPON TRUST that the sd, *trees*, or the survor of them, shl from time to time by mtge of the same premes or any of them, for all or any pt of the same term, or by the sale of timber or minls, or by & out of the rents & profits of the same premes, or by all or any of the means afsd or any other reasble means, raise the sd sum of £—— or £—— as the case may be, or so much thof as shl become raisable, with such intt thron & such annl sums for mtce & such sums for advancemt as may become raisable as afsd, & any costs & expses to be incurred in or about the raisg of the same, or the exon of the trusts of such term, & subjt to & after paymt of such costs & expses, shl pay or apply the moys to be raised as afsd unto or betn, or for the mtce, educon, or advancemt of the sd child or chln, or orwise, in such mner as the same resply ought to be pd or applied by virtue of the chges & provons in that behalf hinbfe contd, & so as to satisfy the same. [*Trusts of surplus rents for revoners*, p. 597, *at end of form* XXX., *mutatis mutandis, unless the genl clause, form* XXXV., *mutatis mutandis*, p. 602, *is used.*]

Devise of copyholds on trusts corresponding with uses of freeholds.

XLVII. I DEVISE all the hds of copyhd or customary tenure [situate in the parishes of, &c., in the coy of, &c.], wch I may be possed of or entled to or have power to dispose of at my dece, except what I orwise dispose of by this my will, or any codl hto, TO THE USE of the sd, *trees*, their hrs & assns, accdg to the customs of the sevl manors of wch the same shl resply be holden, upon such trusts, & subj to such powers & provons as shl correspond with the uses, trusts, powers, & provons hinbfe decld & contd concerng the freehd hds hinbfe devised, or as near thto as the different tenures & other circes will admit, but not so as to increase or multiply chges or powers of chging.

Bequest of leaseholds on trusts corresponding with uses of freeholds (*a*).

XLVIII. I DEVISE & BEQUE all the leasehd hds [situate in the respive parishes, of, &c., in the coy of, &c.], [whether held for yrs, or for a life or lives], wch I may be entled to, or have power to dispose of at my dece, except what I orwise dispose of by this my will, or any codl hto, UNTO the sd, *trees*, for all the term este & intt thrin resply, wch I may have or can dispose of by will, UPON TRUST that the sd, *trees*, or the [survors or] survor of them, shl by & out of the rents, &c., *continue as at* p. 651, *form* CVII., *mutatis mutandis.*

Clause putting son to election to resettle family estate.

XLIX. I DEVISE the —— este, of wch I am now tenant for life under the limons of an indre, &c., *or*, "the will, dated, &c., of ——," to the uses, upon the trusts, and subjt to the powers & provons hrin decld & contd concerng the hds & premes hinbfe devised in strict settlemt (*b*): AND I DIRECT that

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(*a*) Where the personalty is given in trust to convert and invest in realty to follow the uses of the real estate devised in tail, the leaseholds may be amalgamated with the personalty so as to make a strict entail of them; this would also have the advantage of bringing them within s. 32 of the Wills Act so as to prevent lapse in case of a child dying in the testator's lifetime leaving issue (see p. 794, note), which would not be the case under the form in the text unless it came within s. 33. For a form of trust of mining plant, see p. 652, and for forms of trusts of chattels as heirlooms, see pp. 653, 654, forms CIX. and CX., which may readily be adapted to a will. The following power to the trustees to give articles settled as heirlooms to the tenant for life is sometimes useful:—

As to mode of entailing leaseholds and heirlooms.

Power to trustees to give heirlooms to tenant for life.

"PROVD ALWAYS & I empower my trees in their absolute discron at any time or times within twenty-one yrs after my death to give any of the sd articles & effects hby settled, wch my trees may consider not suitable to be kept or enjoyed as heirlooms, to any pson of full age for the time being entled under this my will to the actual posson or rect of the rents & profits of the sd hds hby devised for his or her absolute benefit."

(*b*) If the will does not contain any devise in strict settlement, set out the uses.

the devise lastly hinbfe contd shl take effect under the doctrine of election, & shl thby bind every son [child] of mine who shl under the limons of the sd indre, *or*, "will," become tenant in tail male [or in tail], in posson of the —— este, who shl, accdly, at the reqt in writg & to the satisfon of the sd, *trees*, or the [survors or] survor of them & within such time as they or he shl appt, & at the expse of my este, exte, complete, perfect, & do all such assurces, deeds, instrumts & acts as may be necy for evidcg such election, & givg effect to the devise of the sd —— este hinbfe contd: AND I DECLARE that if any son [child] of mine shl refuse or neglect to comply with any such reqt in writg of the sd trees or tree, or shl orwise fail to exte, complete, perfect, or do such assurces, deeds, instrumts or acts as afsd, or any of them, then my will shl be construed, & the rts of all psons claimg hrunder be determined in all respts as if such son [child] had died immedly bfe me, witht havg been married: PROVD ALWAYS & I declare, that any deed or instrumt wch shl be exted by any of my sd sons [chln] for the ppose of complyg with the condon hinbfe imposed by me resptg the settlemt of the sd —— este, & wch shl be considered & decld by my trees by deed to be sufft & effectual for that ppose, shl, agst all psons & for all pposes, be so accepted & considered, notwg any want of strict compliance with such condon.

Clause as to residence (*a*).

L. AND I DECLARE it to be my parlar wish and reqt, but witht imposg any legal obligon, that the pson for the time being entled to the posson of my mansion-house at ——, if of full age, will make it his or her ppal place of residce.

Bequest to be applied as capital money of an existing settlement.

LI. I BEQUE the sum of £—— to the psons or pson who shl at my death be the trees for the pposes of the S. L. Act, 1882, of an indre, &c., upon trust to invest the same in the pchase of freehold hds to be settled to the uses & upon the trusts, & subjt to the powers & provons to, upon & subjt to wch the pchased hds wd have been subjt if the same had been pchased with capl moys arisg from a sale of the hds settled by the same indre, with power to postpone such pchase durg such period as

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As to condition of residence.

(*a*) A compulsory clause as to this is very objectionable; and it is invalidated by the S. L. A., 1882, so far as it would interfere with the powers of leasing and sale under the Act, see p. 694, note. As to the effect of a compulsory clause, where the person in possession is an infant, see *Partridge* v. *Partridge*, [1894] 1 Ch. 351.

they or he shl think fit, but so that for the ppose of transmission the sd sum of £—— shl be considered as converted into real este settled in mner afsd as from the time of my death, & that till such pchase shl be made the sd sum of £——, & the income thof, shl be hld on the same trusts & applied in the same mner as if the sd sum of £—— had been capl moys arisg in mner afsd.

MISCELLANEOUS CLAUSES.

Condition not to oppose probate (*b*).

I. I DECLARE that if any pson shl [witht the consent in writg of my exs, wch it shl be in their uncontrolled discron to give or refuse (*c*)], dispute the validity of, or shl refuse to confirm this my will, or any codl hto, if required so to do by my exs, such pson shl forfeit all benefits hby or by any codl hto given to him or her, & the same not being residy or a share of residue shl fall into my residy este, or being residy or a share of residue shl go to the other psons or pson entled to such residue as if the pson incurrg such forfeiture had not been included in the residy gift.

Clause binding legatees to abide by opinion of counsel.

II. I DECLARE that in case any question or dispute shl arise as to the constron of my will, or any codl hto, my exs or trees may cause a pper case to be laid bfe counsel for the determinon of the same, wch shl be final & bindg on all psons, & that notwg the pendency of any action or other pcdgs in wch such question or dispute cd pperly be determined: AND I declare that every pson claimg under my will or any codl hto, upon the

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As to conditions not to dispute will, &c.

(*b*) In *Cooke* v. *Turner*, 15 M. & W. 727, 14 Sim. 218, a condition in a will of real estate, that if the devisee should dispute the will, or the testator's competency to make it, or should refuse when required by the executors to confirm it, the disposition in favour of the devisee should be revoked, was held valid; and in *Adams* v. *Adams*, 45 Ch. D. 426, [1892] 1 Ch. 369, a clause of cesser of an annuity in case the annuitant should interfere in the management was held to have taken effect by his bringing a frivolous action for enforcing his rights. But in *Rhodes* v. *Muswell Hill Land Co.*, 29 Beav. 560, it was held that after a gift to persons absolutely, a gift over, if they should resort to any proceedings whatever respecting it, even to secure its enjoyment, was void; see also 2 Jarm. on Wills, p. 902.

(*c*) The words in this bracket should be inserted, otherwise it might be difficult to resist the probate of a forged codicil.

reqt in writg of my exs or trees, shl exte & do, at the expse of my este, all such instrumts, acts, & things as may be pper for carrying such determinon into effect; & in the event of the wilful neglect or refusal of any such pson to do so upon such reqt as afsd, or if any such pson shl institute or procure any other pson to institute any action or other legal pcdgs for determing any such question or dispute as afsd, then I declare that he or she shl forfeit all benefits, &c., *as in last form.*

Trust for indemnifying trustees of testator's marriage settlement in respect of breaches of trust (*a*).

III. *Recite breach of trust committed by trees of testor's marre settlemt:* Now I HBY DECLARE that the sd trust premes constitutg or representg my residy este shl be held upon & for such trusts & pposes as shl render the same a good & sufft indemnity to the sd trees of my sd marre settlemt, & each & every of them, & all past & future trees of the sd settlemt, & their respive hrs, exs & ads, estes & effects, agst all actions, suits, pcdgs, losses, costs, chges, expses, liabilities, claims, & demands whatsr for or on acct of any of the acts & dealgs hinbfe refd to, or any other acts or dealgs of the trees or tree of the sd settlemt up to the time of my dece: And that the same premes or any pt thof may for effectuatg such indemnity be dealt with & resorted to in such mner as the sd psnt or any past or future trees or tree of the sd settlemt, or their or his hrs, exs or ads, or any of them, may require, & that such trust for the ppose of indemnity shl be deemed the first & paramount trust & disposon hby made of the sd premes; AND for further effectuatg such indemnity I declare & direct that the psons benefly intted in the sd trust premes under this my will, or any of them, their or any of their exs, ads & assns, shl be bound under the doctrine of election to adopt & confirm all the acts & dealgs of the sd trees or tree of my sd marre settlemt in the exercise of the trusts thof up to the time of my dece, & especially, *refer to recited breach of trust,* & at the reqt in writg & to the satisfon of my exs or trees, & within such time as they shl appt, at the cost of my residuary este, to exte & do all such instrumts & acts as may be by them reasbly required in that behalf, & for indemnifying & releasg all & every the psnt & past & future trees & tree of the sd settlemt,

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(*a*) See the Judicial Trustees Act, 1896, s. 3; the rules under the Act, [1897] W. N. 257; 2 Annual Practice, 1899, p. 601; *Re Chisholm*, 43 Sol. J. 43; *Perrins* v. *Bellamy*, 46 W. R. 682; *Re Grindey*, [1898] 2 Ch. 593.

& their respive hrs, exs & ads, estes & effects, in respt of all such acts & dealgs, & orwise givg effect to the indemnity & protection intd to be hby proved as afsd: AND I declare that if any pson so benefly intted as afsd, or his or her exs, ads or assns, shl refuse or neglect to comply with the reqt in writg of my exs or trees in that behalf, then my will shl be construed, & the rts of all psons claimg thrunder shl be determined in all respts as if the pson so benefly intted had died bfe me witht leavg issue, AND SUBJT to & after answerg the sevl trusts & pposes afsd upon trust, &c.

The same. Short form.

IV. I DECLARE that if the trees or tree of an indre, &c., [being the settlemt exted on my marre,] have htofore or shl at any time or times hrafter commit a breach or breaches of trust with my consent given exply or by implication, they or he shl be entled to be fully indemnified agst the consequences thof out of my residuary este.

The like by appointment of the settled fund.

V. AND WHAS by an indre dated, &c., & made, &c., a sum of £—— was settled upon trust for me durg my life & after my death in trust for my late husbd durg his life with remr in trust for our issue, & in the event (wch happened) of there being no such issue, in trust for such pson or psons as I shd by will or codl appt, & in default of apptmt in trust as thrin mentd: AND WHAS portions of the sd trust fund amtg to £—— were in the lifetime of my sd husbd advanced to him by the trees of the sd settlemt upon our jt reqt in writg, & a sum of £—— has since the death of my sd husbd been advanced to me out of the sd fund by the sd trees, & further sums may possibly be hrafter advanced by them to me throut: AND WHAS investmts of portions of the sd trust fund have been made in secs wch were not authorised: AND WHAS I am desirous of condong & indemnifying the trees of the sd settlemt in respt of all such advances & investmts as afsd, & all other (if any) past or future breaches of trust committed by the trees of the sd settlemt in my lifetime in mner hinafter expd, NOW in psuance of the power given to me by the sd settlemt I do hby appt the whole of the sd settled fund (includg as well the portion thof wch may remain at my dece as the portions thof wch have been advanced to my sd husbd & myself as afsd or wch may hrafter be advanced to me) to the trees of this my will upon trust, & to the intent in the first place that the sd trees

& all past & future trees of the sd settlemt, & their respive exs & ads, estes & effects, shl be kept fully indemnified & protected by & out of the sd settled fund agst all claims & demands, actions, pcdgs, costs, damages, & expses in respt of the advances hrtofore made to my sd husbd & myself, or wch may hrafter be made to me out of the sd fund, or in respt of any such investmts as afsd, or any other breaches of trust wch have been or may be committed in relon thto durg my life, my will & intention being that no such claim or demand as afsd shl be made eir agst the sd trees, or any past or future trees, or their respive exs or ads, estes or effects, or the este of my sd husbd, or my own este: AND SUBJT as afsd upon trust to apply the sd settled fund (if need be) in paymt of my debts in aid of my genl este: AND SUBJT as hinbfe mentd upon trust, &c.

Precatory trust (*a*).

VI. I REQT the sd ——, but not so as to impose any legal obligon on him, or to create any trust or equity in favour of any other pson, to, &c., *e.g.*, "to carry out my wishes expd in a lre addressed to the sd, *legatee*, & deposited with this my will, wch lre I exply declare not to be testy, & that whether the contents or existce thof shl or shl not be communicated to the sd, *legatee*, durg my lifetime."

Trust for accumulation (*b*).

VII. I DECLARE that my trees shl durg the term of 21 yrs to be calculated from my death [in case my sd wife shl so long live,] out of the annl income of the sd trust premes yrly & every yr raise the sum of £—— [(*c*) & shl accumulate the same at compound intt by investg the same & the resultg income thof in any investmts hby authorised for the sd trust premes, with power from time to time to vary such investmts at discron until the terminon of the sd period of accumulon, & shl then hold & apply the accumulated fund as pt of the capl of the sd trust premes, but so that no pt of such fund shl be invested in the pchase of land].

(*a*) See *Re Hamilton*, [1895] 1 Ch. 373, 2 Ch. 370; *Williams* v. *Williams*, [1897] 2 Ch. 12.

(*b*) See note (*a*), p. 599.

(*c*) If the sums are not to be accumulated at compound interest, in lieu of the part bracketed, say, "& shl hold & apply the sums so raised & the investments thof as pt of the capl of the sd trust premes, but so that the same shl not be invested in the pchase of land."

As to sale or lease of mansion-house, &c., under S. L. Acts (*d*).

Variation where furniture settled.

VIII. I DECLARE that [the sd mansion-house, or] any ppal mansion-house & the pleasure grounds & park, & any lands usually occupied thwith, wch may form pt of the hds hinbfe devised, or for the time being held on the trusts of this my will, may be sold, exchanged, or leased under the powers of the S. L. Acts, 1882 to 1890, [or any powers given by this my will by reference to the sd Acts, or by way of extension of the powers thof,] witht the consent of my trees or any order of Ct, [& that such mansion-house may be let on lease or orwise with or witht all or any of the furniture & effects in or about the same].

As to mining rents under S. L. Acts (*e*).

IX. I DECLARE that no pt of the rent arisg under any ming lease of any hds for the time being subjt to the uses or trusts of this my will shl be set aside as capl moy under the S. L. Acts, 1882 to 1890, or orwise, but the whole thof shl go & be reced & applied as rents & profits.

As to notices under S. L. Acts (*f*).

X. I DECLARE that any powers [of leasg, or acceptg surrenders of leases, or makg grts in fee for the ppose of bldg or improvemts,] *or*, "all the powers," wch are conferred by the S. L. Acts, 1882 to 1890, [or by this my will by referce to or in extension of the powers of the sd Acts] in relon to the sd hds & premes hby devised or for the time being subjt to the uses or trusts of this my will, may be exercised witht givg any notice of the intention to exercise the same to any tree or to the solor of any tree of this my will.

Title of S. L. Acts.

XI. PROVD ALWAYS that any & every referce hinbfe made to the S. L. Acts, 1882 to 1890, or any of such Acts, shl be deemed to extend to & include any Act or Acts from time to time in force, extendg, amendg, or re-enactg the same Acts, or any of them, but not so as to abridge or restrict any of the powers hby conferred by referce thto.

Marginal breviate not to form part of will (*g*).

XII. THE BREVIATE or headgs in the margin of this my will [or codl] shl not be taken as pt thof or in any mner affect the interpreton or constron thof.

(*d*) See S. L. A. 1890, s. 10, and Vol. I., p. 471.

(*e*) See S. L. A, 1882, s. 11, above, p. 620, note.

(*f*) See S. L. A. 1882, s. 45, S. L. A. 1884, s. 5, and S. L. A. 1890, s. 7 ; and p. 298, note.

(*g*) To be inserted at end of will or codicil when paragraphed with marginal headings.

TRUSTEE CLAUSES.

Appointment of trustees under S. L. Acts (*a*), and C. A., s. 42.

I. I HBY appt my trees, *or*, "the sd, *trees by name*," to be trees of this my will for the pposes of the 42nd section of the Conveyancg & Law of Ppty Act, 1881, & for the pposes of the S. L. Acts, 1882 to 1890, [*if the will gives powers by referce to the Acts, or by way of extension of the statutory powers, add*, & of any powers conferred by this my will by referce to or by way of extension or enlargemt of the powers of the sd Acts]. AND I DECLARE that a sole tree for the time being of this my will shl be competent to act for all the pposes of the sd Acts, & this my will, includg the rect of capl moy [& of notices] thrunder.

The same as to a particular estate.

II. I HBY appt, *trees by name*, to be trees of the settlemt hby made of the sd —— este for the pposes, &c., *as in last form*.

Trustees' receipt clause (*b*).

III. I DECLARE that the rect of my trees for the pchase-moys of any ppty hby directed or authorised to be sold, or for any other moys, stks, funds, shares, or secs, pd, delivered, or transferred to them under this my will, or any codl hto, or in the exon of the trusts or powers thof, shl effectually dischge the pson or psons paying, deliverg, or transferrg the same thfrom, & from being concerned to see to the applicon, or being ansble for the loss or misapplicon thof.

Power to appoint new trustees.

Variations for

IV. PROVD ALWAYS & I hby declare that if & so often as the sd trees hby constituted, or any of them, shl die in my lifetime, or if they or any of them, or any tree or trees apptd under this psnt power or by a Ct of competent jurisdon, shl

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(*a*) See Vol. I., p. 473. The words bracketed in form I. should be added where appropriate, as the trustees would not, it is conceived, otherwise become trustees under the Acts, except for the purposes of the powers given by the Acts themselves.

As to omission of trustee clauses.

(*b*) The receipt clause, the power to appoint new trustees, and the trustees' indemnity and reimbursement clauses may be and are now almost universally omitted, in reliance on the statutory provisions referred to in p. 517, note (*d*); and the clauses supplemental to the statutory provisions as to the appointment and indemnity of the trustees, forms VI. and XV., *infra*, substituted. The full clauses in the text (forms III., IV., and XIV.), although retained, can in future be very rarely required; but it may occasionally be proper to insert the full clauses if the testator owns property situate abroad, where there may be no enactments corresponding to those referred to.

die after my dece or remain out of the United Kingdom for more than twelve calr months, or desire to be dischged, or refuse or become unfit or incapable to act, it shl be lful (*d*) for the survivg or continuing trees or tree [of the class in wch such vacancy or disqualificon shl occur] (& for this ppose every refusg or retirg tree shl, if willg to act in the exon of this power, be considered a continuing tree,) or for the actg exs or exor, or ads or admor, of the last survivg or continuing tree [of the same class] (*e*) to appt a new tree or new trees in the place of the tree or trees so dying or remaing out of the United Kingdom, or desirg to be dischged, or refusg or becomg unfit or incapable to act as afsd; And upon every such apptmt the no. of trees may be increased or reduced, but not to less than two; And upon every such apptmt the trust ppty (if any) [then vested in the trees or tree of the class in wch such vacancy or disqualifon shl occur, or in the hrs, exs, or ads of the last survor of such trees] shl as soon as circes will admit be vested in the trees for the time being [of the same class], but every new tree may, as well bfe as after the trust ppty shl have been so transferred, exte all the trusts or powers of this my will [trusts or powers in respt of wch he shl be so apptd a tree,] as fully & effectually as if he had been hby constituted a tree.

several sets of trustees (*c*).

V. PROVD ALWAYS & I hby declare that it shl be lful for my trees to appt any psons, not being less than two in no., of whom any one or more of the genl trees of this my will may be one or more, to be trees of, *here describe the ppty as*, "such pt of the sd trust premes as shl for the time being be situate

Power to appoint special trustees of particular property (*f*).

(*c*) See the last note. As to appointing several sets of trustees, and as to the persons in whom the power should be vested, see p. 657, note.

(*d*) Sometimes the power of appointing new trustees is given to the tenant for life; if this is intended, insert here, "for the sd, *tenant for life*, durg his life, & aftwds."

(*e*) For variations where the power is vested in or exercisable with the consent of the beneficiaries, see form VII.

(*f*) Separate sets of trustees of different parts of the trust property may now be appointed under the T. A., 1893, s. 10 (2); but a special power, as above, may occasionally be desirable. When power is given to appoint special trustees of any share, it will probably be desirable to insert also the power to appropriate specific parts of the property in satisfaction of any of the shares. See p. 733, form VII.

in New Zealand," *or*, "the origl & accruing share or portion hby provd for any child of mine in the trust premes," *or as the case may be*, & upon every such apptmt the trust ppty, *or*, "share or portion," in respt of wch such trees shl be so appted shl, as soon as circes will admit, be transferred so as to be vested in the trees so appted upon such trusts & subjt to such powers & provons as are hrin decld & contd concerng the same trust premes, & so that all the trusts, powers & provons of this my will [includg the trusts & powers for sale & conversion & postpong conversion, & leasg & managemt until sale & investmt & varying investmts, accdg to the nature of the ppty] shl so far as the same may be capable of applying be applicable to such trees in relon to such share or portion, *or*, "trust ppty," as afsd, & the trust premes from time to time representg the same, in the same mner as far as may be as if such trees had been the sole trees for the time being of this my will.

Clause supplemental to statutory power of appointing new trustees, with variations (*a*).

VI. I DECLARE that the power of apptg new trees of this my will shl be vested in my sd wife durg her life, & after her dece in the sd *tenant for life*, durg his life, *or*, "in the sd, *tenants for life*, durg their jt lives, & the survor of them durg the life of such survor."

The same. Another form (*a*).

VII. I DECLARE that the power of apptg new trees of this my will shl be exercisable with the consent of my sd wife durg her life, & after her dece of the sd, *tenant for life*, durg his life, *or*, "of such of my sd sons as shl for the time being be of full age," *or*, "of the pson or psons of full age, if any, for the time being entled to the income of the sd trust este;" and aftwds, *or*, "in case & so long as there shl be no such pson," at the discron of the psons or pson in whom such power shl for the time being be vested under the statute in that behalf.

Provision for keeping up number of trustees.

VIII. PROVD ALWAYS, & it is my wish that the no. of the trees of this my will shl at all times be kept up to not less than three, and that in the event of the no. becomg at any time by death or orwise reduced below that no. the vacancy or vacancies shl as soon as circes will conveniently admit be filled

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(*a*) See p. 519, note (*b*). In the common case where the power is to be in the continuing trustee without any restriction, the statutory provisions are sufficient whether there is only one set, or several; as to the desirability of so vesting the power where the S. L. Acts apply, see p. 657, note.

up so as to restore that no., but nevs any acts or pcdgs of the trees or tree for the time being in the interval bfe the fillg up of such vacancy or vacancies shl not be invalidated by reason of the same not havg been done.

Power to majority of trustees to act.

IX. PROVD ALWAYS, & I declare that all or any of the powers & authorities hby given to or vested in my trees in relon to the trust este may at any time if deemed expedient be exercised by a majority of the trees for the time being witht the concurrce or with merely the formal concurrce of any one of such trees who by reason of illness, infirmity, residce at a distce or orwise may be unable or unable witht inconvenience to take an active pt thrin, & the last-mentd tree may, if thought fit, in order to facilitate such arrangemt, by power of atty or orwise empower any of the other trees to use his or her name for exon or signature of documts for any of the purposes of the trust witht being responsible for loss, & all acts & pcdgs of the majority of the trees shl in such case be as valid & effectual as if they had all concurred thrin.

Power to employ agents, &c. (*b*).

X. I AUTHORISE my trees to employ any agents, collectors, clerks, accountants, or managers, for the ppose of gettg in rents or debts, or managg or keepg or makg up the accts of my este, or orwise in relon to the exon of the trusts of my will, at such remuneron, eir by way of poundage or salary or orwise, as they shl think fit.

Power to appoint agents to get in or manage property abroad, &c. (*c*).

XI. I EMPOWER all or any of my trees, or exs, or any sole tree or exor for the time being of this my will who may be resident in the United Kingdom, to appt any pson or psons (whether a tree or trees, or exor or exs of my will or not) to act as their or his agent or atty, or agents or attys, or on their or his behalf in —— or elsewhere abroad, for the ppose of sellg, convertg, collectg, gettg in, & executg & perfectg assurces of, or managg or cultivatg any of my ppty, real or psonal, wch may be abroad, or orwise administerg my este in —— or executg the trusts of my will in relon to any such ppty, with such provons in that behalf as may be thought fit, & with

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(*b*) See also next form, and note thereto; and form XVIII.

As to delegating trust.

(*c*) In the case of property abroad, the trustees would have this power without special authority, this being from the necessity of the case an exception to the rule that a trust cannot be delegated: see *Stuart* v. *Norton*, 14 Moo. P. C. C. 17; but see *Re Hetling* and *Merton*, [1893] 3 Ch. at 280.

power to appt substitutes witht being responsible for any loss thby arisg ; & I give the like power to my trees or tree or exs or exor who may be resident abroad to appt any pson or psons to act for them or him in any part of the United Kingdom or elsewhere witht being responsible for loss.

Power to delegate trusts to resident trustees (*a*).

XII. I AUTHORISE my trees from time to time to delegate to such of the sd trees as may for the time being be resident in England, the exon of the trusts & powers of this my will, as regards ppty situate in England, & to such of the sd trees as may for the time being be resident in New Zealand, the exon of the afsd trusts & powers as regards ppty situate in New Zealand, & from time to time to revoke such delegon, & for that ppose to exte such powers of atty or other instrumts as may be pper witht being responsible for loss: And I declare that no pchaser or other pson dealg with any trees or tree to whom the exon of any of such trusts or powers may have been delegated shl be bound to inquire whether such delegon remains in force.

Declaration as to moneys received by resident trustees (*b*).

XIII. AND I DECLARE that the net proceeds of sales, & rents, income, or other moys realised from my ppty in New Zealand, wch shl not be required for paymt of debts, or expses, or other pposes in New Zealand, shl from time to time be remitted to my trees in England, to be applied by them upon the trusts of this my will.

(*a*) See note (*c*), p. 821.

Death duties as affected by domicile or the locality of the property.

(*b*) As to the incidence of colonial or foreign death duties, see *Peter* v. *Stirling*, 10 Ch. D. 279. English legacy duty is imposed on movable property, i.e., on personal property, except chattels real, but including partnership real estate, which is in equity personalty : *Forbes* v. *Steven*, L. R. 10 Eq. 178 ; *Re Stokes*, 38 W. R. 535 ; wherever situate, which passes under the will, or on the intestacy of a person domiciled in the United Kingdom : *Att.-Gen.* v. *Napier*, 6 Ex. 217 ; but it is not payable if he dies domiciled abroad : *Thomson* v. *Adv.-Gen.*, 12 Cl. & Fin. 1. Succession duty is payable on the death of any person in respect of (1) immovable property, i.e., real estate and chattels real, situate in the United Kingdom ; (2) legacies charged on, and the proceeds of sale of immovable property, wherever situate, of a person dying domiciled in the United Kingdom ; (3) movable property settled by a British settlement, where the trustees, or any of them, are domiciled in the United Kingdom, notwithstanding that the property is in fact out of the United Kingdom, and that all the *cestuis que trust* are domiciled out of the United Kingdom : *Lyall* v. *Lyall*, L. R. 15 Eq. 1 ; *Re Cigala*, 7 Ch. D. 351 ; (4) movable property in the United Kingdom over which a testator domiciled abroad has exercised a general power of appointment *Re Lovelace*, 4 De G. & Jo. 340. The estate duty imposed by the Finance Act, 1894, is imposed on property out of the United

Clause for indemnity and reimbursement of trustees.

Variations for several sets of trustees and other circumstances (*c*).

XIV. PROVD ALWAYS & I hby declare that my trees [the sevl trees of this my will] shl be resply chgeable only for such moys, stks, funds, shares, & secs as they shl resply actually rece, notwg their resply signg any rect for the sake of conformity, & shl be ansble & responsible only for their own acts, rects, omissions, neglects, & defaults resply, & not for those of each other, nor of any banker, broker, auctioneer [atty], or other pson with whom, or into whose hands, any trust moys or secs shl be deposited or come, nor for dispensg wholly or partially with the investigon or prodon of the lessor's title as to leasehds, nor for orwise acceptg less than a marketable title on [the pchase, or takg in exchange, or on parton or enfranchisemt, or on] lendg moy on the secy of any hds (*d*), [nor for any defect in title or value of any hds pchased or taken in exchange or on parton or enfranchisemt or on mtge,] nor for the insuffcy or deficiency of stks, funds, shares, or secs, nor for any other loss, unless the same shl happen through their own wilful default resply, & also that the sd [sevl] trees or tree for the time being may reimburse themselves or himself resply, or pay or dischge out of the sd trust premes all expses incurred in or about the exon of the trusts or powers of this my will.

Clause supplemental to statutory indemnity of trustees (*e*).

XV. I DECLARE that in addon to the ordinary indemnity given by law to trees, my trees may dispense wholly or partially with the investigon or prodon of the lessor's title as to leasehds, or orwise accept less than a marketable title on [the pchase or takg in exchange or on parton or enfranchisemt or] lendg moy on the secy of any hds, & shl not be liable for any loss occasd thby.

Kingdom only, if under the law in force at the passing of that Act "legacy or succession duty was payable in respect thereof, or would be so payable, but for the relationship of the person to whom it passes" (Finance Act, 1894, s. 2 (2)). In certain cases the death duties payable in respect of property situate in a British possession may be deducted from the estate duty payable in respect of that property, s. 20. Property chargeable with Estate duty is exempt from additional succession duty, and generally from legacy and succession duties at the lower rates, F. A. 1894, s. 1, see p. 683, note.

(*c*) See p. 517, note (*d*).

(*d*) See p. 520, note (*c*).

(*e*) This is now partly provided for by statute (see p. 520, note (*c*); but as the clause goes beyond the statutory powers, especially as to the part in brackets, it is in general better to insert it.

Power to trustees to settle questions.

XVI. I AUTHORISE my trees to determine what articles pass under any specific beqt contd in this my will, or any codl hto, & whether any moys are to be considered as capl or income, & whether any expses, outgogs, or other paymts ought to be pd out of capl or income, & how valuons are to be made, or value determined, for the ppose of any case of [hotchpot, or satisfon, or] allotmt, or approprion, or orwise, & to apportion blended trust funds (*a*), & to determine all questions & mres of doubt arisg in the exon of the trusts of this my will, or any codl hto: And I declare that every such determinon, whether made upon a question actually raised or implied in the acts or pcdgs of my trees, shl be conclusive & bindg on all psons inttd under this my will or any codl hto.

Power to trustees to act although personally interested.

XVII. I DECLARE that my trees may exercise or concur in exercisg all powers & discrons hby or by law given to them, notwg that they or any of them may have a direct or other psonal intt in the mode or result of exercisg any such power or discron [but any of my trees shl nevs be at liberty to abstain from actg except as a merely formal pty in any mre in wch he may be so psonally inttd, & to allow his co-trees or co-tree to act alone in the exercise of the powers & discrons afsd in relon to such mre]. [illegible]

Power to executors and trustees to employ agents (*b*).

XVIII. I HBY DECLARE that my exs or exor or trees or tree for ~~the time~~ being shl not be bound in any case to act psonally, but shl be at full liberty to employ a solor or any other agent to transact all or any business of whatsr nature required to be done in the premes, includg the rect & paymt of moy, & shl be entled to be allowed & be pd all chges & expses so incurred, & shl not be responsible for the default of such solor or agent or any loss occasioned by his employmt [(*c*) AND I FURTHER DECLARE that the sd —— & any other exor or tree for the time being hrunder being a solor or other pson engaged in any profession or business shl be entled to chge & be pd all usual professional or other chges for any business done by him or his firm in the premes, whether in the ordinary course of his profession or business or not, & although not of a nature requirg the employmt of a solor or other professional pson].

And to charge for business done professionally.

(*a*) See p. 515, note (*d*).

(*b*) See p. 521, note (*d*).

(*c*) This makes him a legatee, *Re White*, [1898] 2 Ch. 217.

The same. Short form.

XIX. I DECLARE that my exs & trees may employ & pay a solor or any other agent to transact all the business of the trust, & that the sd —— shl be entled to rece all usual professional chges & emolumts notwg his actg as one of my exs & trees.

Provision enabling professional trustee to be paid by a salary (*d*).

XX. AND I DECLARE that any tree may agree with the other trees or tree for the time being to rece in respt of all or any parlar pt of the business of the trust in lieu of the ordinary professional chges, a salary of such amt & durg such period as may be deemed reasble.

Devise of trust and mortgage estates of copyhold (*e*).

XXI. I DEVISE to my exs, their hrs & assns, all hds of copyhd or customary tenure wch may at my dece be vested in me as a tree or mtgee, & of wch I may be tenant on the Ct rolls of any manor or manors, subjt to the trusts or equities affectg the same resply.

Declaration as to devolution of trustees' powers (*f*).

XXII. I DECLARE that all the powers, authorities, & discrons hby expd to be vested in or given to the trees of this my will by that or any other description shl be vested in & exercisable by the sd trees hby appted, & the [survors or] survor of them, or other the trees or tree for the time being of this my will, & that a sole tree for the time being shl be competent to act for all pposes [*where there is more than one set of trees, add* "& that unless the contrary is expd or implied by the context, any referce hrin contd to the trees or tree hrof shl be deemed to apply to the genl trees or tree & not to the trees or tree of the sd term of —— yrs," *or as the case may be*].

(*d*) As to remuneration to a trustee appointed receiver and manager by the Court, see *Re Bignell*, [1892] 1 Ch. 59.

As to trust and mortgage estates.

(*e*) It was formerly usual to insert a separate devise of freeholds and copyholds vested in the testator as a trustee or mortgagee, to prevent questions and difficulties as to the devolution of such estates, and for convenience in future dealings; but such a devise is now, as regards freeholds, unnecessary and ineffectual, since by s. 30 of the C. A., 1881, such an estate devolves on the personal representatives "notwithstanding any testamentary disposition," as a chattel real. This enactment, however, has been repealed as to copyholds to which the testator or intestate has been admitted, by the Copyhold Act, 1887, 50 & 51 Vict. c. 73, s. 45, repealed by the Copyhold Act, 1894, and re-enacted by s. 88 (see Vol. I., p. 458, note); and the clause should therefore in general be inserted as to copyholds. There may possibly in some cases be a saving in fines if the devise is to one only of the executors; see 32 Sol. J. 690.

(*f*) When this or a similar provision is inserted, the expression "my trees," may be used throughout the will as in the above forms. See also forms I. and II., as to trustees under the S. L. Acts; and see p. 523, note (*e*).

APPOINTMENT OF EXECUTORS, &c. (*a*).

Appointment of executor or executors.

I. I APPT my son D. sole exor, *or*, "my wife C. sole extrix" of this my will, *or*, "A., of, &c., B., of, &c., & C. of, &c., exs of this my will."

Appointment of executors and trustees.

II. I APPT A., of, &c., B., of, &c., & C. of, &c., exs & trees of this my will.

The same, including wife while unmarried.

III. I APPT my wife C. [so long as she shl remain unmarried] & my son D. extrix & exor [& trees] of this my will [& I direct that in the event of my sd wife marrying again, the trust este shl be transferred so as to be vested in the other trees or tree for the time being].

The same, with substitution.

IV. I APPT A., B., & C., exs [& trees] of this my will, & in case any one of them shl die in my lifetime or shl renounce probate thof, I appt D. an exor in his place [& in case any one of them shl die in my lifetime or decline to act as tree, I appt the sd D. a tree in his place, & I direct that the trust este shl in such case be transferred so as to be vested in the sd D. jtly with the other trees or tree for the time being].

The same, including son on attaining 21.

V. I APPT A. & B., & also my son C. in case & when he shl attn the age of twenty-one yrs, exs & trees of this my will; And I direct that in case the sd C. shl not attn that age till after my death the trust ppty shl on his attaing that age be transferred so as to be vested in him jntly with the other trees or tree for the time being.

Appointment of legatee special executor, as to property bequeathed to him (*b*).

VI. I APPT the sd A. exor of this my will as to the sd [bond debt &] premes hinbfe bequed to him, & I direct that the este duty & expses of takg out the limd probate in respt thof shl be borne by him, & I appt C. & D. genl exors of this my will.

(*a*) As to whether a person can accept the executorship without the trusteeship, see Vol. I., p. 627, note. As to the appointment of a person abroad to be an executor and trustee "if & when he shl return to England," see *Re Arbib*, [1891] 1 Ch. 601; and as to the appointment of a person to act during the absence abroad of an executor, see *Re Taylor*, [1892] P. 90. Where a limited company were named executors, administration, with the will annexed, was granted to the general manager of the company as their nominee, *Re Hunt*, [1896] P. 288.

(*b*) If the testator's business is bequeathed to trustees who are appointed special executors, the following power should be added:—"AND I AUTHORISE the sd, *trees*, to pay any debts or claims in respt of the

VII. I AUTHORISE my actg exs or exor for the time being to pay any of my debts or any claims upon my este upon any evidce wch they or he shl think sufft, & to accept any composon or any secy, real or psonal, for any debt due to me or my este, & to allow any time for the paymt of such debt as they or he shl think fit, & also to compromise, compound, or submit to arbitron all debts, accts, claims, or things whatsr belongg or relatg to my este, & for any of the pposes afsd to enter into, give, exte, & do such agreemts, instrumts of composon, reles, & things as they or he shl think expedient, witht being responsible for loss.

Power to executors to compromise, &c. (*c*).

VIII. PROVD ALWAYS that inasmuch as the sd A. may be indebted to me or to my este at my death for moys lent by me to him or orwise, I declare that the exs & trees for the time being of this my will (other than the sd A.) shl be deemed to be exs & trees in respt of any moys owing by the sd A. to me or my este as afsd & the intt thof, & shl be alone entled to recover & rece such moys & intt, & to give a good dischge for the same, but the same when reced shl be held & dealt with as pt of my genl este.

Provision where one of executors and trustees may be indebted to testator.

IX. I APPT A., of, &c., & B., of, &c., to be the gdians of my infant chln [to act jtly with my sd wife durg her life & also after her dece jtly with the gdians or gdian (if any) who may have been appted by her].

Appointment of guardians (*d*).

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sd business, &c." continue as in next form, saying, where necessary, "in respt of the sd business."

(*c*) This may generally be omitted (except in such a case as is mentioned in the last note), having regard to the large powers given to executors and trustees by the T. A., 1893, s. 21. This power does not charge the debts on the real estate, *Re Head*, 45 Ch. D. 310.

(*d*) Under the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), the mother will, if surviving the father, be guardian of their infant children, alone, or jointly with the guardian or guardians (if any) appointed by the father s. (2). Before the Act, if the mother, being a guardian, married again, an enquiry would have been ordered by the Court whether she should be continued, but this practice is not now followed, *Re X.*, [1899] 1 Ch. 526. The mother may by deed or will appoint a guardian or guardians of her infant children (if unmarried) after the death of both parents; and where guardians are appointed by both parents they shall act jointly (s. 3, sub-s. 1). Such guardian or guardians may, however, be removed by the Court, if satisfied that it would be for the benefit of the infants, and the jurisdiction extends to infants who are not wards of Court, and who have no property: *Re McGrath*, [1892] 2 Ch. 496, affirmed [1893] 1 Ch. 143. The mother may by deed or will provisionally nominate a

Guardianship of Infants Act, 1886.

The same. Another form.

X. I APPT the trees or tree for the time being of this my will to be the gdians or gdian of my infant chln after the death of my sd wife in default of her havg appted any such gdian or gdians or (in the event of her havg made any such apptmt) then after the death or refusal to act of the pson or all the psons so appted by her.

The same for children of two marriages.

XI. I APPT A., of, &c., & B., of, &c., to be the gdians of my infant chln by my former wife ——, & also to be the gdians jtly with my sd psnt wife ——, or with any gdians or gdian who may be appted by her of my infant chln by her.

TESTIMONIUM AND ATTESTATION.

Testimonium of will.

I. IN WITS whof I, the sd ——, have to this my will [to each sheet of this my will contd in this & the precedg —— sheets of paper] (*a*) [exted in duplicate, *or*, "triplicate,"] set my hand this —— of ——.

The same of codicil.

II. IN WITS whof I, the sd ——, have hrunto [to each sheet of this codl, contd in —— sheets of paper] (*a*) set my hand this —— day of ——.

Short testimonium of will or codicil.

III. AS WITS my hand this —— day of ——.

Attestation of will or codicil (*b*).

IV. SIGNED by the above-named testor as [a codl to] his last will in the presce of us, psnt at the same time, who, in his presce & at his reqt & in the presce of each other, have hrunto subscribed our names as witses.

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guardian or guardians of her infant children, to act jointly with the father; and such appointment may after her death be confirmed by the Court on evidence that the father is for any reason unfit to be sole guardian (s. 3, sub-s. 2; see as to this *Re G—*, [1892] 1 Ch. 292). The Act does not affect the right of the father to decide what religious education his children shall receive, or the duty of the guardian after his death to bring up his children in his religious faith (*Re Scanlan*, 40 Ch. D. 200); but the rule that children should be brought up in the religion of their father whether living or dead, or in accordance with his wishes, is not so rigid that the Court will not depart from it if sufficient reason be shown, the welfare of the children being the ultimate guide: *Re Newton*, [1896] 1 Ch. 740; *Re Nevin*, [1891] 2 Ch. 299; *Re McGrath*, *ubi supra*.) The father may delegate the power of appointing guardians after his death to another person (*Re Parnell*, L. R. 2 P. & D. 379); which is in fact involved in the common form appointing the trustees for the time being.

(*a*) The testator should sign each sheet, though this is not essential; the attesting witnesses usually sign the last sheet only.

(*b*) As to attestation, see the Wills Act, ss. 9 and 10, and as to execution of a

The same. Short form.

V. SIGNED by the above-named testor in the jt presce of us who in his presce & that of each other have hrunto subscribed our names as witses.

Attestation of will made on day of testator's marriage (c).

VI. SIGNED by the above-named testor on the day of & shortly after his marre with —— as his last will in the presce of us, &c., *as above.*

Attestation where testator is blind or illiterate.

VII. SIGNED by the above-named testor as his last will, the same havg been first read over to him in our presce, with his mark (*d*), in the presce of us, &c., *as above.*

Attestation where another person signs for testator.

VIII. SIGNED by, *amanuensis*, with the name of the above-named testor as his last will in his presce & by his diron (*e*) in the presce of us, &c., *as above.*

Attestation where there have been alterations or erasures (*f*).

IX. SIGNED, &c., *as above*, the interlineon betn the —— & —— lines of the —— page, & the alteron in the —— line of the —— page, and the erasure on the —— line of the —— page havg been prevsly made [*or*, the words "——" havg prevsly been erased, *or*, substituted for the words "——" in the —— line, *or*, interlined betn the —— & —— lines of the —— page].

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will of personalty by a British subject wherever domiciled the Wills Act 1861, 24 & 25 Vict. c. 114. A proper attestation clause is useful, both as instructions to the testator and witnesses, and also as affording *prima facie* evidence of due execution, and enabling an affidavit by one of the witnesses of due execution, which would otherwise be necessary, to be dispensed with, in ordinary cases of probate in common form. A power to a solicitor trustee to make professional charges is such a benefit as will be forfeited by his being an attesting witness, *Re Barber*, 31 Ch. D. 665; *Re Pooley*, 40 Ch. D. 1.

(*c*) The object of this special attestation of course is to record the fact that the will was not made *before* the marriage, so as to be thereby revoked.

(*d*) The testator's hand may be guided in making his mark or signature.

(*e*) The amanuensis may be one of the attesting witnesses, and must sign the testator's name.

(*f*) If the alterations are not noticed in the attestation clause, the testator and the attesting witnesses should place their initials opposite or against each alteration, which is sufficient to make them valid: *Re Blewitt*, 5 P. D. 116.

PRECEDENTS.

I.

PREC. I.

OUTLINE WILL *showing the* GENERAL ARRANGEMENT *of the clauses.*

Commcemt, p. 682; *Apptmt of exs & trees*, p. 826; *Confirmon of marre settlemt*, p. 683; *Apptmts under special powers*, post, p. 867; *Specific beqts of furniture & psonal effects, &c.*, pp. 686 *et seq.; Other specific legacies*, p. 683; *Specific devises*, p. 690; *Beqts of leasehds*, p. 697, [*Managemt, minority, & mtce, &c., clauses as to specifically devised real & leasehd ppty*, pp. 778 *et seq.*]; [*Minority clauses as to legacies to infants*, pp. 805 *et seq.*]; *Beqt of business*, p. 700; *Genl legacies*, p. 708; *Beqts of annies*, p. 720; *Gifts of residue*, p. 726; [*Trusts for conversion, with power to postpone conversion, & subsidiary clauses*, pp. 729 *et seq.; Trust for paymt of debts & legacies, &c.*, p. 734; *And investmt*, pp. 738 *et seq.*;] *Beneficial trusts of residue*, pp. 740—772; [*Mtce, accumulon, &*] *advancemt clauses*, pp. 772 *et seq.*; [*Powers of sale & conversion of real & psonal este where there is no previous trust for conversion & provons for investmt of proceeds & subsidiary clauses*, p. 731:] [*Declaron of trust of income until conversion, & provon as to income of wastg ppty*, pp. 736 *et seq.*]; *Powers of managg & leasg, &c., real & leasehd estes*, pp. 782 *et seq.*; *Power to mtge*, p. 735; *Power to parton*, p. 785; *Power to pchase land*, p. 787; *Power to allot specific ppty in satisfon of legacies or shares of residue*, p. 733; *Power to wind up or carry on business*, pp. 701 *et seq.*; *Various powers*, pp. 731 *et seq.*, 782 *et seq.*; *Declaron that intts given to females shall be for septe use witht anticipon*, p. 770; *Miscellaneous provons*, pp. 813 *et seq.*; *Clauses as to S. L. Acts*, pp. 786, 807, & 817; *Power to trees to settle questions*, p. 824; *Provons as to apptmt of new trees, & indemnity of trees, if required*, pp. 818 *et seq.*; *Declaron as to devolon of trees' powers*, p. 825; *Apptmt of trees under S. L.*

Acts, p. 818; *Special powers to exs*, p. 827; *Devise of trust & mtge estes of copyhd*, p. 825; *Power to trees to employ agents for professional trees to chge for business done*, p. 824; *Apptmt of gdians*, p. 827; *Testimonium*, p. 828.

PREC. I

Testor's
Signature.

Atteston, p. 828.

II.

WILL *making* WIFE UNIVERSAL DEVISEE *and* LEGATEE, *and sole* EXECUTRIX.

PREC. II.

Commcemt, p. 682. I DEVISE & BEQUE all the este & effects whatsr & wheresr, both real & psonal, to wch I may be entled, or wch I may have power to dispose of at my dece, unto & to the use of my wife B., her hrs, exs & ads, resply, absolutely, & I appt her sole extrix of this my will. IN WITS whof I have hrunto set my hand this —— day of ——.

General devise and bequest.

Appointment of executrix.

III.

WILL *giving residuary* REAL *and* PERSONAL ESTATE *absolutely*, SUBJECT *to* LEGACIES *and* ANNUITIES, *with variations, where they are* CHARGED *on* REALTY *in aid of personalty.*

PREC. III.

Commcemt, p. 682; *Specific legacies*, pp. 683 *et seq.*; *Genl legacies*, pp. 708 *et seq.* [*chge of legacies on real este*, p. 719]; *Beqts of annies*, pp. 720 *et seq.*, [*& see* p. 725, *forms* XVIII. & XIX.]; *Beqt of residy psonalty & realty*, p. 727, *form* III., *addg after the beqt of the psonalty the words*, " subjt to & after paymt of my funl & testy expses," &c., *as in* p. 727, *form* I., *& insertg after the gift of the real este the words* " chged in aid, &c.," *as in* p. 727, *form* II., *if the real este is to be chged; Apptmt of exs*, p. 826; *Devise of trust, &c., estes of copyhd*, p. 825; *Power to exs & trees to employ agents, &c.*, p. 824. IN WITS, &c.

IV.

PREC. IV.

WILL *disposing of* REAL *and* PERSONAL *estate in trust for* CONVERSION (*a*) *and payment of* INCOME *to* WIFE *for* LIFE *or* WIDOWHOOD, *with remainder in* TRUST *for* CHILDREN, *with* VARIATIONS. ULTIMATE TRUST *for testator's* BROTHERS *and* SISTERS, *or* NEPHEWS *and* NIECES (*b*).

Commcemt, p. 682, *form* I.; [*Confirmon of marre settlemt*, p. 683;] *Beqt to wife of furniture & movables & wines & consumable stores*, p. 686; *Other specific legacies*, p. 683; *Immediate pecuniary legacy to wife*, p. 708, *form* VIII.; *Genl legacies*, p. 708; *Genl devise & beqt of realty & residy psonalty to trees*, p. 729, *form* VIII.; *Trust for conversion, with power to postpone conversion*, p. 729, *form* I.; *Trusts of proceeds of conversion to pay debts, &c., p.* 734, *form* IX.; [*with marshllg clause*, p. 734, *form* X.;] *& for investmt*, p. 738, *form* XVI.; *Trusts for paymt of income to wife for life or widowhood,*

Advantage of trust for sale of residue.

(*a*) Whenever the residuary real and personal estate or any share thereof is put into settlement (otherwise than by way of entail), and also in general where any of the beneficiaries may be infants, the machinery of a *trust* for sale and conversion (qualified by a power to postpone it), should be used as in this precedent instead of a mere *power* of sale, as a trust for sale is simpler in its frame and more certain as to its duration than a power; and it greatly simplifies the subsequent trusts by making the whole fund constructively personalty, whereas in the converse case the draughtsman is hampered at every step by having to adapt all the forms to a mixed fund of real and personal estate. Moreover the convenience of a trust for conversion is often greatly increased by the S. L. A., 1884, as the necessity for the consent of the statutory tenant for life to sales and leases and other dealings by the trustees (which would be necessary in the case of a mere power) is in that case dispensed with by s. 6 of that Act unless an order has been obtained under s. 7; and this is extremely important in the case of the statutory tenant for life of the property or any share thereof being a lunatic not so found, since his consent to the exercise of the powers could not be given (see Vol. I., p. 476), so that if a mere power of sale were inserted, a deadlock would ensue; from which there would be no escape except by an application to the Court under the S. E. A., 1877.

The form of a trust for sale will retain all the advantages above indicated, although it is qualified by a power, however full, to postpone conversion, so that an actual sale will be no more necessary than if it were in the form of a mere power. It may also be qualified by a restriction making the consent of the tenant for life or any other person necessary to its execution without detriment to its operation as a constructive conversion.

(*b*) See the notes to the clauses, above.

p. 740, *form* I. [*chged with mtce of chln*, p. 744, *form* X.]; AND AFTER the death [or marre] of my sd wife, shl stand possed of the sd trust premes & the income thof, [*trust for chln as widow shl appt*, p. 745, *form* I., *or* p. 746, *form* III.]; [*Provo where wife's intt is determinable on marre*, p. 745, *note* (*f*)]; *Trust for chln at* 21, *&c.*, p. 746, *form* IV., *or* V. [*for the form where daurs marrying witht consent are absolutely excluded, see form* VI.; *where chln dying in testator's lifetime leavg issue are to be included, see* p. 749, *form* XII.; *where the issue of chln dying in testor's lifetime are to be substituted for the parents, see* p. 751, *form* XVII., *or* p. 753, *form* XX.; *where the chln take uneqlly, see* p. 754, *form* XXIII. *or* XXIV.; *where shares are given to any of the chln by name, insert, if appropriate, the accruer clause*, p. 761, *form* XII.]; [*If the widow has a power of apptmt, hotchpot clause*, p. 755, *form* XXV.]; [*Clause directg sums taken under marre settlemt to be brought into acct*, p. 756, *form* XXVIII.; *Advces made to chln by testor in his lifetime to be brought into acct*, p. 757, *form* XXIX.]; [*Mtce & accumulon clauses*, pp. 772, 773, *forms* I. & II.]; [*where the chln are to be maintained out of the income as a common fund, see* p. 773, *form* III.; *& where out of capl*, p. 777, *form* XII.]; *Advcemt clause*, p. 776, *form* IX.; *Ultimate trust in default of chln commencg as at* p. 768, *form* VII., *or if more appropriate, as in form* V. *or* VI., *for brothers & sisters of testor*, [*or his nephews & nieces*, "being chln of my own brothers & sisters,"] *livg at his death, or at time of failure of prior trusts, & chln of those dead*, p. 767, *form* I., II., *or* III.; *Diron as to income until conversion*, p. 736, *form* XIII.; *Power to manage real & leasehd estes until sale*, pp. 782, 783, *form* I. *or* II.; *Clauses* (*c*) *givg trees powers of leasg, &c., by reference to*

As to clauses referring to S. L. Acts.

(*c*) In wills containing a trust for conversion there is in general no absolute necessity for the insertion of any clauses with reference to the S. L. Acts, unless it be the clauses giving the trustees powers of leasing, &c., by reference to the Acts; and where the testator has not, and is not likely to acquire any real or leasehold property of any importance, or it is wished to make a short will, the clauses may be omitted altogether. But in a case in which the testator has any considerable amount of real or leasehold property, and there is a likelihood of the tenant for life assuming the management of the estate, and availing himself of the Acts by obtaining an order under s. 7 of the Act of 1884, and it is desired to facilitate the granting of leases, &c., the tenant for life should be enabled to exercise the statutory powers without any restriction, by inserting

PREC. IV.

the S. L. Acts, p. 786, *& apptg them trees for the pposes of the Acts*, p. 818; *Provon as to* [*mansion-house with referce to the Acts*, p. 817, *& as to ming rents*, p. 817, *&*] *notices*, p. 817; *Power to allot specific ppty in satisfon of shares of residue*, p. 733, *form* VII.; *Power to trees to settle questions*, p. 824; *Clauses supplemtal to the statutory provons as to apptmt & indemnity of trees*, pp. 820 *&* 823; *Apptmt of exs*, p. 826; *Declaron as to devolon of trees' powers*, p. 825; *Devise of trust & mtge estes of copyhd*, p. 825; *Power to exs & trees to employ agents, &c.*, p. 824; *Apptmt of gdians*, p. 827. IN WITS, &c.

V.

PREC. V.

WILL *disposing of* PERSONAL ESTATE *in trust for* CONVERSION *and payment of* INCOME *to the* WIDOW *for* LIFE, *with remainder to the* CHILDREN. VARIATIONS *for* REAL *and* LEASEHOLD ESTATE. *A very* SHORT FORM.

Commencement. Bequest of furniture. Gift of residue. Trust for conversion. Trust to pay debts and invest.

THIS is the last & only will of me, A., of, &c.; I GIVE to my wife, B., all articles & effects of psonal, domestic, or househd use or ornamt, & an immediate legacy of £——; I GIVE the residue of my [real & psonal] este to my sd wife & C., of, &c. (hinafter called my trees), IN TRUST to sell, convert, & get in the same, with power to postpone such sale & conversion indefinitely witht being responsible for loss, AND out of the proceeds thof to pay my funl & testy expses & debts, AND to invest the residue in any investmts authorised by law in the case of trust moy, with power to vary such investmts at

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the clause dispensing with the necessity for giving the statutory notices under s. 45 (though this is of less consequence than before the Act of 1884, by s. 5, whereof notices may be general, or may be waived by the trustees), or for obtaining the consent of the trustees to a lease of a mansion, under s. 10 of the Act of 1890, if applicable. And for a property containing minerals of any kind (including quarries or brickfields) the mining rent clause should be inserted if according to the intention.

As to giving leasing and other powers to the trustees, see p. 784, note. If any such powers are given to them by reference to the Acts, as in form VII., p. 786, they should be declared to be trustees within the meaning of the Acts for the purpose of such powers, see p. 818, form I., and note thereto.

discron, AND to pay the income of the sd trust este, as well bfe as after the sale, conversion, & investmt thof, to my wife durg her life, AND after her death to stand possed thof in trust for all or any of my chln or remoter issue in such shares & mner as my sd wife shl by deed or will appt, AND in default of & subjt to any such apptmt in trust for all or any my chln or child who being male attn the age of 21 yrs, or being female attn that age or marry, if more than one eqlly [*for varions in the trust for the chln see the referces in Prec.* IV.]; *Hotchpot clause*, p. 756; *Advcemt clause*, p. 776; [*If the testor is entled to real or leasehd ppty add leasg power*, p. 784]; I APPT my sd wife & the sd C. my exs. *Power to exs & trees to employ agents, &c.*, p. 824; [*Apptmt of gdians*, p. 827]. IN WITS, &c.

PREC. V.

Pay income to wife for life.

Trust for issue.

As wife shall appoint.

In default for children equally.

Appointment of executors.

VI.

WILL, *containing bequest of* STOCK *legacy to a* SISTER *and her* ISSUE, *and disposing of* REAL *and* PERSONAL *Property in trust for* CONVERSION. TRUSTS *for* WIDOW *for* LIFE, *remainder for Testator's* CHILDREN. VARIATIONS *for a* WILL *of a* SMALL TRADER. *A very* SHORT FORM.

PREC. VI.

Commcemt, p. 682, *form* II.; *Beqt of furniture, &c., to wife*, p. 686, *form* XVIII.; *Beqt of stk legacy to trees*, p. 708, *form* VI., UPON TRUST to pay the divds thof to my sister —— durg her life for her septe use, witht power of anticipon, & after her dece as to the capl of the sd sum of stk IN TRUST for her chln or such of them as shl be livg at my death, if more than one in equal shares (*a*); BUT IF she shl not have any child then livg, then the same sum of stk shl sink into & become pt of my residy psonal este; *Genl legacies*, p. 708; *Genl devise & beqt in trust for conversion, paymt of debts, &c., & investmt as in last Prec.*; AND UPON TRUST to pay the income of my sd residy este & the investmts thof to my wife durg her life, &

Bequest of stock legacy to a sister and her issue.

Income.

(*a*) This trust is sufficient where the family is grown up; for other forms, see pp. 746 *et seq.*

PREC. VI.

Capital.

Declaration as to income till conversion.

after her death to hold the same trust premes [*Trusts for issue as in last Prec.*]; [*For trader, add short form of power to carry on business,* p. 704]; I DECLARE that all the net annl produce arisg from the unconverted pt of my este, whether real or psonal, & of whatsr descripon [includg the net profits derived from the carrying on of the sd business], shl be applied in the same mner as if the same were income arisg from the proceeds of the conversion of my este; *Power to manage real & leasehd ppty until sale,* p. 782, *form* II.; [*Leasg power,* p. 784;] *Apptmt of exs,* p. 826; *Power to exs & trees to employ agents, &c.,* p. 824; [*Apptmt of gdians,* p. 827]. IN WITS, &c.

VII.

PREC. VII.

WILL *giving an* ANNUITY *to the Testator's* WIFE, *and containing specific and residuary* BEQUESTS *to his two* CHILDREN, ONE *of whom is a* MINOR, *with a* GIFT OVER *on his* DEATH *under* 21 *to the other.* *Power to* CONTINUE *a* LOAN. *A short Form.*

Power to purchase annuity (*a*).

Gift over on death of son under 21,

and on death of either son in testator's lifetime.

Investment of share of minor.

Commcemt, p. 682; *Gift to wife of furniture, &c.,* p. 686; *& immediate legacy,* p. 708; *Specific legacies to B. & C., the chln,* p. 683; *Gift of anny to wife,* p. 720, *form* V.; AND I AUTHORISE my exors to pchase an anny from Governmt or some public Co in the name of my wife, to satisfy the anny hinbfe given to her; *Power to exors to continue loan,* p. 790; *Gift of residue to B. & C. eqlly,* p. 728, *form* IV.: BUT IF the sd C. shl survive me, & aftwds die under the age of 21 yrs, & witht issue, then I DEVISE & BEQUE the moiety of my real & residy psonal este hinbfe given to him to the sd B., his hrs, exs, ads, & assns absolutely; AND IF eir of them the sd B. & C. shl die in my lifetime witht leavg issue survivg me, I devise & beque all the real & psonal este hinbfe given to him, to the other of them, if he shl survive me, or shl die in my lifetime leavg issue survivg me, his hrs, exs, ads, & assns absolutely; AND I DECLARE that if I shl die bfe the sd C. shl attn the age of 21 yrs, the sd B., or other the tree or trees of this my will, shl

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(*a*) See p. 724, note.

invest the psonal este hinbfe bequed to the sd C. in or upon, &c., *investmts*, pp. 459—464, *forms* III.—VIII., with power to vary such investmts at discron; AND I DECLARE that durg the minority of the sd C. the sd tree or trees shl take & retain posson, or rece the rents & profits of the real & leasehd hds hby devised to the sd C., & shl manage the same with all the powers in that behalf of an absolute owner: AND SHL, after paying all outgoings & expses, apply at discron the whole or any pt of the sd net rents & profits, & also the income of the sd investmts of the psonal este hinbfe bequed to him (subjt to the paymt of the sd anny, or a proportionate pt thof), for the mtce & educon or benefit of the sd C., with power to pay the same to his gdian or gdians for that ppose, witht seeing to the applicon thof; AND THE SURPLUS of the sd rents, profits, & income shl be invested in mner afsd, & shl accrue & be added to the psonal este hinbfe bequed to the sd C., but so that such surplus, or the investmts thof, may be applied for the benefit of the sd C. in any subseqt yr (*b*); I AUTHORISE the sd tree or trees to raise by mtge or sale any sum or sums, not exceedg in the whole the sum of £——, out of the real & psonal ppty hby given to the sd C. (but preferentially & as far as the same will extend out of the psonal este (*c*)), & to pay or apply the same for his advancemt or benefit durg minority, as the sd tree or trees shl think fit: AND I EMPOWER the sd tree or trees durg the minority of the sd C. to exercise over his share of all or any of my real & leasehd hds all such powers as are by the S. L. Acts, 1882 to 1890, conferred upon tenants for life; *Apptmt of B. as tree for the pposes of the S. L. Acts*, p. 818; *Add any of the other clauses with referce to the Acts wch may be required as in Prec.* IV.; *Apptmt of B. exor & tree*, p. 826; *Power to employ agents, &c.*, p. 824; [*Apptmt of gdians*, p. 827]. IN WITS, &c.

Minority clause.

Maintenance.

Accumulation.

Advancement.

Clause giving powers of S. L. Acts.

(*b*) The minority clause in the C. A., 1881, s. 42, would apply to this case (see p. 779, note), and might be relied on as to the real or leasehold property, form XIX., p. 780, being in that case inserted, *mutatis mutandis;* but the maintenance clause in s. 43 is of doubtful application, as the interest of the infant in this case is a *vested* one subject to a gift over (see p. 477, note), so that the insertion of an express clause is necessary.

(*c*) See p. 734, note.

VIII.

PREC. VIII.

WILL *of a* WIDOW *in favour of an* ONLY SON *who is a* MINOR, *with a* GIFT OVER *in case of his* DEATH UNDER AGE. SHORT FORM.

Commcemt, p. 682; *Beqt of jewellery & wearg apparel*, p. 685; *Genl legacies*, p. 708; *Genl devise & beqt to trees*, p. 729; *Trust for conversion & paymt of debts, &c.*, pp. 729, 734; [*marshallg clause*, p. 734]; *Trust for investmt*, p. 738; & shl stand possed of the sd moys & investmts & of the income thof on trust for my son A. if & when he attns the age of 21 yrs, WITH POWER to my trees in their discron to apply any pt of the capl of the sd trust premes for the advcmt of my sd son durg his minority in such mner as they may think fit; BUT IF MY sd son shl die, whether in my lifetime or after my dece, under the age of 21 yrs, or shl die in my lifetime after attng that age, but witht leavg issue survivg me (*a*), then my trees shl hold the sd trust premes, or so much thof as shl not have been applied or disposed of under the trusts or powers of this my will or by law vested in my trees, UPON TRUST from & after the death of the survor of myself & my sd son, to pay the annl produce & income of the sd trust premes to my sister —— durg her life, & so that durg coverture the same shl be for her septe use, witht power of anticipon, & after her death UPON TRUST to raise & pay throut the sum of £—— to each of my sisters —— & ——, & to hold the ultimate residue of the sd trust premes IN TRUST for ——; *Powers of managemt*, p. 778; *Clauses givg powers of leasg & sale, &c., by referce to S. L. Acts*, p. 786, *& apptg trees for ppose of Acts*, p. 818; *add any other clauses required with referce to Acts; Apptmt of exs*, p. 826; *Power to employ agents, &c.*, p. 824; *Apptmt of gdians*, p. 827 (*b*). IN WITS, &c.

Advancement.

For son at 21.

On his death under age.

Sister for life.

After her death.

Legacies to sisters.

Ultimate trusts.

(*a*) If the son were to leave issue the gift would take effect under the 33rd section of the Wills Act.

(*b*) As to the appointment of guardians by the mother, see the Guardianship of Infants Act, 1886, *ante*, p. 827, note.

IX.

WILL *disposing of* REAL *and* PERSONAL *property* WITHOUT *trust for* CONVERSION (*c*), INCOME *to* WIFE *for* LIFE *or* WIDOWHOOD. VARIOUS TRUSTS *for* CHILDREN *or* ISSUE.

PREC. IX.

Commcemt, p. 682; [*Confirmon of marre settlemt*, p. 683]; *Beqt to wife of furniture & movables & wines & consumable stores*, p. 686; *Other specific legacies*, p. 683; *Immediate pecuniary legacy to wife*, p. 708, *form* VIII.; *Genl legacies*, p. 708; *Gift of realty & residy psonalty to trees, subjt to debts & legacies, &c.*, p. 729, *form* VIII. [but so that my legacies shl be borne & pd primarily by & out of my psonal este & my debts primarily by & out of my real este as far as the same resply will extend (*d*)], UPON TRUST that the sd trees or the survors or survor of them, or other the trees or tree for the time being of this my will (hinafter called my trees) shl pay, &c., *Income to wife for life or widowhood*, p. 740, *form* I., *insertg in this & the subseqt clauses the varions given in the notes for a mixed fund of real & psonal este* [*chged with mtce of chln*, p. 744, *form* X.]; AND AFTER the death [or marre] of my sd wife shl stand possed of the sd trust premes, & of the net rents, profits, & income thof, [*Trust for chln as widow shl appt*, pp. 745, 746, *form* I., *or* III.]; [*Provo where wife's life intt is restricted to widowhood*, p. 745, *note* (*f*);] *Trust for chln at* 21, *&c.*, p. 746, *forms* IV. *or* V. [*for the form where daurs marrying witht consent are absolutely excluded, see form* VI.; *where chln dying in testor's lifetime leavg issue are to be included, see* p. 749, *form* XII.; *where the issue of chln dying in testor's lifetime are to be substituted for the parents, see* p. 751, *form* XVII., *or* p. 753, *form* XX.; *where the chln take uneqlly, see* p. 754, *form* XXIII. *or* XXIV.; *where shares are given to any of the chln by name, insert, if appropriate, the accruer clause*, p. 761, *form* XII.]; [*Hotchpot*, p. 755, *form* XXV.;] [*Clause directg sums taken under marre settlemt or advces made by testor in his lifetime to be brought into acct*, p. 757, *forms*

Trusts.

(*c*) But as to the objections to a will in this form, see p. 832, note.

(*d*) See p. 734, note.

PREC. IX. xxviii. & xxix.]; *Special mtce & accumulon clause,* p. 778, *form* xvi. (*a*); *Special advcemt clause,* p. 780, *form* xx.; Provd always & I hby declare that for the ppose of givg effect to the sevl provons hinbfe contd, *continue addon to hotchpot & advcemt clauses,* p. 758, *form* xxxi. *Ultimate trust in default of chln, commencg as at* p. 768, *form* v., vi., *or* vii.; *Special declaron as to income of ppty of a wastg nature,* p. 736, *form* xiii.; *Power to manage real & leasehd estes,* pp. 782, 783, *form* i. *or* ii., *with the varions; Clause givg to trees powers of leasg & sale, &c., by referce to the S. L. Acts,* p. 786; *Apptmt of trees under Acts,* p. 818 (*b*); *Add any of the other clauses required with referce to the Acts as in Prec.* IV.; *Power to allot specific ppty in satisfon of shares of residue,* p. 733, *form* vii.; *Power to trees to settle questions,* p. 824; *Clauses supplemtal to statutory powers of apptg & indemnity to trees,* pp. 820—823; [*Declaron as to devolon of trees' powers,* p. 825]; *Apptmt of exs,* p. 826; *Devise of trust, &c., estes of copyhd,* p. 825; *Power to employ agents, &c.,* p. 824; [*Apptmt of gdians,* p. 827] In wits, &c.

X.

PREC. X.

WILL *bequeathing* Leaseholds *in trust for a* Sister *of the testator and her* Issue, *and giving* Charitable *and* Other Legacies, *including a* Pecuniary Legacy *in trust for another* Sister *and her* Issue, *and disposing of residuary* Real *and* Personal *estate in trust for* Conversion, *the* Income *to be paid to the* Testator's Brother *for* Life, *with* Trusts *in remainder for the* Brother's Children.

Bequest of leaseholds in

Commcemt, p. 682; *Specific legacies,* p. 683; *Beqt of leasehd house & land to trees upon trust to pay outgoings,* p. 698,

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(*a*) The real and personal estate being in this precedent vested in the trustees in trust for the infants, ss. 42 and 43 of the C. A., 1881, might possibly both apply; but this is open to considerable doubt (see p. 477, note, p. 778, note), and the objection as to the clashing of those sections adverted to in p. 479, makes it specially desirable to exclude them and insert an express provision for maintenance and accumulation.

(*b*) As there is no trust for sale in this case, the clause appointing trustees trust for a sister and her issue.

And in default of issue for her appointees, or to fall into residue.

Bequest of legacy in trust for another sister, and her issue.

form II., AND UPON FURTHER TRUST, durg the life of my sister B., to pay the surplus or net rents & profits of the same premes to my sd sister, & so that durg coverture the same shl be for her septe use witht power of anticipon, AND FROM & AFTER her dece my trees shl stand possed of the sd leasehd premes, *for chln or child of sister, at* 21, *&c.*, p. 746, *form* IV.; AND if my sd sister shl have no child who shl attn a vested intt under the trusts hinbfe contd, then in trust for such pson or psons for such pposes & in such mner in all respts as my sd sister shl by deed or will appt, & in default of & subjt to any such apptmt, the same premes shl sink into & become pt of my residy este [*or, if it is desired absolutely to exclude a husbd, form* VIII., p. 769, *may be used*]; [*Advcemt clause*, p. 776, *form* IX. (*c*)]; *Other specific devises*, p. 690; *Charitable legacy*, p. 714; *Genl legacies*, p. 708; *Beqt of moy legacy to trees*, p. 708, *form* V.: UPON TRUST that my trees shl invest, &c., *Trust to invest & vary investmts*, p. 738, *form* XVI., *to pay income to testor's sister C. for life, witht anticipon*, p. 741, *form* II.; [*If life intt in remr is given to C.'s husbd D., insert form* III., p. 741; *insert such of forms* IV. *to* VIII., pp. 741 *to* 743, *as may be appropriate*]; AND after the death of the sd C., [*or*, of the survor of them the sd C. & D.], my trees shl stand possed of the sd sum of £——, & the investmts representg the same, IN TRUST, &c., *for C.'s chln* [*as C., or C. & D., or survor may appt*, p. 745, *form* II. *or* III., *in default of apptmt for chln*] *eqlly at* 21, *&c.*, *form* IV.; [*Hotchpot clause*, p. 755, *form* XXV.]; *Advcemt clause*, p. 776; *Ultimate trusts of* "the sd legacy of £——, & the investmts representg the same," p. 768, *form* V., *for C.'s apptees, & in default of apptmt to fall into residue, as above* [*or, if it is desired absolutely to exclude a husbd, form* VIII., p. 769, *may be used*]; *Annies to servants, &c.*, p. 720; *Gift of residy realty & psonalty to trees*, p. 729, *form* VIII.; *Upon trust for conversion*, p. 729, *form* I.; *Trust of proceeds for paymt of debts, &c.*, p. 734, *form* IX. [*with mar-*

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for the purpose of the Acts is required unless a power of sale is given to them either expressly or by reference to the Acts, in which case they would *ipso facto* be trustees for the purposes of the Acts; as to this, and the effect of s. 16 of the Act of 1890, see Vol. I., p. 473.

(*c*) The powers of leasing and sale, &c., are omitted in reliance on the S. L. Acts. For a form giving such powers by reference to the Acts, see p. 786.

PREC. X. *shallg clause,* p. 734]; *& for investmt,* p. 738, *form* XVI.; *Trusts for paymt of income,* "subjt to the annies hinbfe bequed," *to A. the brother for life,* p. 740, *form* I.: AND AFTER the death of the sd A., shl stand possed of the sd trust premes, & the income thof (subjt as afsd), *Trust for A.'s chln or issue, as he shl appt,* p. 745, *form* II. *or* III.; *Trust in default of apptmt for A.'s chln at* 21, *&c.,* p. 746, *form* IV., [*where the trust includes chln of A., dying in testor's lifetime, leavg issue, see* p. 750, *form* XIII.; *where the trust is for the chln of A. who survive him & the issue of those dying in his lifetime, see* p. 752, *form* XIX. *&* p. 753, *form* XXI.; *where the eldest son takg the este is excluded, see* p. 754, *form* XXII.; *where the chln take uneqlly, see* p. 754, *form* XXIII. *or* XXIV.]; *Hotchpot,* p. 755, *form* XXV.; [*Mtce & accumulon clauses,* p. 772, *to be inserted if the eldest son is excluded*]; *Advcemt clause,* p. 776; *Ultimate trust in default of A.'s chln, commencg as at* p. 768, *form* V., VI., *or* VII.; *Diron as to income until conversion,* p. 736, *form* XIII.; *The rest of this Prec. will be the same as Prec.* IV., *includg such of the clauses relatg to the S. L. Acts as may be required with reference to the specifically devised leaselds or the residy este, but with the omission of the apptmt of gdians.* IN WITS, &c.

XI.

PREC. XI.

WILL *disposing of* REAL *and* PERSONAL *property, including* COPYHOLDS, *in trust for* CONVERSION. *The* WIFE *takes a* LIFE INTEREST *in the* WHOLE, DETERMINABLE *as to one* MOIETY *on her* MARRYING *again, with* REMAINDER *to* CHILDREN *at twenty-one, &c.* SETTLEMENT *of* DAUGHTER'S SHARES. *The* TRUSTS *of the* SHARES *being declared* TOGETHER.

Commcemt, p. 682; *Specific legacies,* p. 683; *Genl legacies,* p. 708; *Devise of copyhds to such uses as B., C., & D. trees, shl appt, & subjt thto all realty to trees,* p. 728, *form* VII.; *Beqt of* Trusts. *psonalty to trees,* p. 728, *form* V.; AND I DECLARE that my trees shl hold the sd real & psonal este & premes hinbfe devised

& bequed to them upon trust, &c., *Trust for conversion*, p. 729, *form* I.; *Trusts of proceeds of conversion to pay debts, &c.*, p. 734, *form* IX. [*with marshally clause*, p. 734, *form* X.]; *Trust for investmt*, p. 738, *form* XVI.; AND SHL pay the income of the sd trust premes representg my sd residy este to my wife durg her widowhood, & in the event of her marryg again shl pay the income of one moiety (*a*) of the sd trust premes to her durg the remr of her life for her septe use witht power of anticipon: AND SUBJT to the intt of my sd wife in the sd trust premes durg her life or in a moiety thof in the event of her remarre as afd shl stand possed of the sd trust premes, *Trust for chln at* 21, *&c.*, p. 746, *form* IV.: PROVD ALWAYS, & I DECLARE that the share in the sd trust premes hinbfe expd to be given to any daur of mine shl not vest absolutely in such daur, but shl be retained by my trees upon trust that my trees shl, &c. (*b*), *First life intt to daur witht anticipon*, p. 760, *form* IV.; *Power of apptmt among daur's chln or issue*, p. 760, *form* VIII.; *Trust for daur's chln in default of apptmt*, p. 761, *form* IX.; *Hotchpot clause*, p. 761, *form* X.; *Power to daur to appt a life intt to a survivg husbd*, p. 762, *form* XIV.; *Ultimate trust of daur's share for her testy apptees*, p. 761, *form* XI.; *In default of apptmt to accrue to other shares*, p. 761, *form* XII.; *Provo that share of daur dying in testor's lifetime leavg issue shl be held upon the same trusts as if she had survived him*, p. 763, *form* XVII.; *Provo that share of son dying in testor's lifetime shl be in trust for his chln, at* 21, *&c., & in default shl accrue to other shares*, p. 764, *form* XVIII.; *Advcemt clause*, p. 776, *form* IX.; *Declaron as to income until conversion*, p. 736, *form* XIII.; *Power to manage real & leasehd este until sale*, pp. 782, 783, *form* I. *or* II.; *Clause givg powers of leasg, &c. by referce to S. L. Acts*, p. 786, *& any other clauses relatg to the Acts wch may be required, as in Prec.* IV.; *Power to allot specific ppty in satisfon of shares of residue*, p. 733, *form* VII.; *Provo as to consent to investmts*, p. 739; *Power to trees to settle questions*,

Income.

Capital.

Settlement of daughter's shares.

(*a*) Note that this should take the form of a trust for payment of the income of a moiety of the fund, and not a moiety of the income of the whole fund, to the wife; as a trust in the latter form might interfere with the distribution of a moiety of the capital among the children on her marrying again.

(*b*) For the mode of declaring the trusts where the shares are settled differently, see the next Precedent.

Frame of trust of moiety for wife for life.

PREC. XI.

p. 824; [*Power to appt special trees of daur's shares*, p. 819]; *Clauses as to apptmt & indemnity of trees*, pp. 820 & 823; [*Declaron as to devolon of trees' powers*, p. 825]; *Apptmt of exs*, p. 826; *Devise of trust, &c., estes of copyhd*, p. 827; *Power to employ agents, &c.*, p. 824; [*Apptmt of gdians*, p. 827]. IN WITS, &c.

XII.

PREC. XII.

WILL *of* REAL *and* PERSONAL *property in trust for* CONVERSION. *The* BENEFICIAL TRUSTS *being for testator's* BROTHERS *and* SISTERS NOMINATIM, *and the* SHARES *being* SETTLED *on the donees and their issue, &c.* THE TRUSTS *of two shares are* IDENTICAL, *and of all the other shares are* DIFFERENT, *the* TRUSTS *being partly declared by* REFERENCE. ACCRUER *clause.*

Commcemt, p. 682; *Specific legacies*, p. 683; *Genl legacies*, p. 708; *Gift of residy realty & psonalty*, p. 729, *form* VIII.; *on the usual trusts for conversion*, p. 729, *& paymt of debts, &c.*, p. 734, *form* IX. [*with marshallg clause*, p. 734]; AND SHL stand possed of the residue of the sd moys in trust for my brothers & sisters K., L., M., N., & O., *namg them*, in eql shares; PROVD ALWAYS & I declare that the share in the sd residy moys hinbfe expd to be given to the sd K., shl not vest absolutely in him but shl be retained by my trees upon trust that my trees shl with the consent of the sd K. if livg, or orwise at their discron, invest such share in the names or under the legal control of my trees in or upon, &c., *investmts*, p. 459, *form* III., IV., V., VI., VII., *or* VIII.; *power to vary*, p. 464; AND SHL pay the income of the sd share & the investmts representg the same to the sd K. durg his life; AND AFTER the death of the sd K. shl stand possed of the sd share & of the investmts thof, *Trust for chln or issue of* K., *as he shl appt*, p. 745, *form* II. *or* III., *in default for his chln at* 21, *&c.*, p. 746, *form* IV.; *Hotchpot*, p. 755, *form* XXV.: AND I DECLARE that the share in the sd residy moys hinbfe expd to be given to the sd L., shl not vest absolutely in him but shl be retained by my trees, who shl hold the same share & the investmts & income thof upon the

Trusts of share of one brother.

Of another brother by reference.

like trusts & subjt to the like powers & provons in favour of my sd brother L., & his chln & more remote issue, & orwise, as are hinbfe decld & contd concerng the share hinbfe given to the sd K., & the investmts & income thof, in favour of the sd K. & his chln & more remote issue, in the same mner in all respts as if such trusts, powers & provons were hrin repeated with the substiton of the name of the sd L. for the name of the sd K.; *Similar trust of the share of anor brother M.*, SAVE & EXCEPT that in case the sd M. shl at any time alienate or chge, &c., *continue Provo determg life intt on bkptcy, &c., & provon for applicon of income*, p. 743, *form* IX.; AND SAVE & EXCEPT further, & I declare that after the determinon or failure of the life intt of the sd M., & subjt to the discronary trust or power lastly hinbe contd, my trees shl pay the income of his share & the investmts thof to X. his psnt wife if survivg durg her life & so that in the event of her marryg again the same shl be for her septe use witht power of anticipon; *Declaron that trees shl retain the share of N., a sister, upon trust for investmt* "with the consent of N. if livg or orwise at their discron, in or upon any of the stks, funds, shares, & secs hinbfe authorised as investmts in the case of the share of the sd K., & may with such consent or at such discron as last afsd vary or transpose such investmts for others of the like nature:" AND SHL durg the life of the sd N., &c., *life intt for septe use, &c.*, p. 760, *form* IV.; *Second life intt to psnt husbd*, p. 760, *form* VII.; *Power of apptmt among issue*, p. 760, *form* VIII.; *Trust in default for chln at 21, &c.*, p. 760, *form* IX., *mutatis mutandis; Hotchpot*, p. 761, *form* X.; *Similar declaron that trees shl stand possed of anor share upon trusts in favour of O. anor sister & her husbd & issue similar to those in favour of N.*, "her husbd & issue," *see above*, SAVE & EXCEPT that from & after the death of the sd O. my trees shl hold the sd share & the income thof in trust for such pson or psons & for such pposes as the sd O. shl while discovert by deed revocable or irrevocable, or whether covert or discovert by will or codl appt, & that the trusts in favour of the husbd & issue of the sd O. shl take effect only in default of & subjt to any such apptmt, *Genl mtce & accumulon clauses*, p. 774, *& advcemt clause*, p. 776, *form* IX., *applying to all the shares*; PROVD ALWAYS, & I declare that if any of my sd brothers & sisters shl die in my lifetime leavg

Of another brother. With variations.

Trusts of share of a sister.

Of another sister by reference. With variations.

Provision in case of death of a

PREC. XII.

brother or sister in testator's lifetime.

Accruer clause.

issue or a wife or husbd livg at my death, the share hinbfe expd to be given to him or her shl be held upon & for the same trusts & pposes as if he or she had died immediately after my death; *Accruer clause*, p. 769, *form* X., *mutatis mutandis, saying*, "the share of any brother or sister of mine," "by way of addon to the share or shares of the other or others of my sd brothers & sisters;" *Declaron as to income until conversion*, p. 736, *form* XIII.; *The rest of the Clauses may be as in Prec.* IV., *so far as applicable, & addg a power to appt special trees*, p. 819, *form* V., "of the share or shares of any brother or sister of mine in the sd trust premes." IN WITS, &C.

XIII.

PREC. XIII.

WILL *of* REAL *and* PERSONAL *property.* BEQUEST *of* BUSINESS, *or* SHARE *of* BUSINESS, *to* ELDEST SON. USUAL *trusts for* CONVERSION. TRUSTS *for payment of an* ANNUITY *to* WIDOW *and* ANNUAL SUM *for benefit of an* IMPROVIDENT SON. *Subject thereto,* TRUSTS *of* PROCEEDS *of* CONVERSION *for* CHILDREN OTHER *than the* ELDEST *Son and the* IMPROVIDENT *Son.* POWER *to* LEND *trust* FUNDS *to* ELDEST SON *to be* USED *in the* BUSINESS.

Annuity to wife.

Trusts of capital.

Commcemt, p. 682; *Specific legacies*, p. 684; *Genl legacies*, p. 708; *Beqt to eldest son of business or share in ptnp*, p. 701; *Gift of realty & residy psonalty to trees*, p. 729, *form* VIII.; *on trust for conversion*, p. 729, *form* I.; *to pay debts, &c.*, p. 734; [*with marshallg clause*, p. 734]; *to invest residue*, p. 738, *form* XVI.; AND SHL out of the income of the sd trust premes pay an anny of £—— to my wife durg her life, to commce from my death & be payable, &c., p. 720, *form* I.; AND SHL, subjt to the paymt of such anny, stand possed of the sd trust premes & the income thof in trust for my chln or child other than the sd K., *the eldest son*, & my son L., *the improvident son, at* 21, *&c., see* p. 746, *form* IV.; AND IF I shl have no child other than as afsd who being a son attns the age of 21 yrs, or being a daur attns that age or marries, then in trust for the sd K., absolutely; *Advcemt,* p. 776; *Power to lend trust funds to eldest son for pposes of business,* p. 739; PROVD ALSO, & I further authorise my trees, if in their uncontrolled discron they shl think fit, to raise out of the income, &c., *continue power to raise & pay annl sum for the benefit of L., the improvident son,* p. 722, *form* XII.; *or bequest of anny for his benefit,* p. 723, *form* XIII. *Power to appropriate fund to answer anny to wife,* "& the sums of moy for the time being raisable under the power lastly hinbfe contd," *& saying aftwds,* "such anny & annl sums," p. 724, *form* XV.; *Declaron as to income until conversion,* p. 736, *form* XIII.; *Power to manage real & leasehd este,* p. 782, *form* I. *or* II.; *Clause givg powers of leasg, &c., by referce to S. L. Acts,* p. 786; *Add any other clauses with referce to the Acts wch may be required, as in Prec.* IV.; *Power to trees to settle questions,* p. 824; *Clauses as to apptmt & indemnity of trees,* p. 820, *form* VI., p. 823, *form* XV.; *Declaron as to devolon of trees' powers,* p. 825; *Apptmt of exs & trees,* p. 826; *Devise of trust, &c., estes of copyhd,* p. 825; *Power to employ agents, &c.,* p. 824; *Apptmt of gdians,* p. 827. IN WITS, &c.

Trust for improvident son.

XIV.

WILL *of a* PARTNER *in trade disposing of* REAL *and* PERSONAL *property on* USUAL TRUSTS *for* CONVERSION, *&c., giving* POWERS *to* TRUSTEES *to join in* CARRYING ON BUSINESS, *and to make* ARRANGEMENTS *for* ADMISSION *of testator's* SONS. THE PROPERTY *is held on the* USUAL TRUSTS *for the* WIDOW *and* CHILDREN, *with* SETTLEMENT *of the* SHARE *of an* IMPROVIDENT CHILD.

Commcemt, p. 682; *Specific legacies,* p. 683; *Genl legacies,* p. 708; *Gift of realty & residy psonalty to trees,* p. 729, *form* VIII.; *On trust for conversion,* p. 729, *form* I.; *To pay debts,* p. 734; [*with marshallg clause,* p. 734]; *& to invest,* p. 738; *Life intt to widow,* p. 740, *form* I.; *Usual trust for testor's chln at* 21, *&c.,* p. 746, *form* IV.; *Advcemt,* p. 776; PROVD

Trusts of

PREC. XIV.

share of improvident son.

ALWAYS & I declare, that the share in the sd trust premes hinbfe expd to be given to my son K., *the improvident son*, shl not vest absolutely in him, but shl be retained by my trees upon trust that my trees shl, in their absolute discron, *Trust for improvident son*, p. 765, *saying*, "the sd share," *& omittg the ultimate trust, for wch may be substituted the follg:* PROVD ALWAYS & I declare, that in the event of the failure or determinon of the trusts & provons hinbfe decld & contd concerng the share of the sd K. in the sd trust premes, such share & the income thof or so much thof resply as shl not have been applied or disposed of under the trusts & provons afsd, shl accrue & be added to the share or shares of my other chln or child in the sd trust premes, & if more than one, in eql shares & proportions; *Power to trees to continue business*, p. 702, *or* p. 704; AND ALSO, *to make arrangemts for admission of sons into business*, p. 706, *form* IX.; AND ALSO, *to reserve rt of introducg yor sons at* 21, p. 707, *form* XI.; *Declaron as to income until conversion*, p. 736, *form* XIII., *addg after the words*, "from my este real or psonal," *the words*, "includg the net profits arisg from the sd business." *The rest of the clauses may be as in Prec.* IV. IN WITS, &c.

XV.

PREC. XV.

WILL *of a* TRADER *giving* POWER *to* TRUSTEES *to* CARRY ON BUSINESS, *with* OPTION *to* SONS *in Succession to* PURCHASE *it.* GIFT *of* RESIDUE *on* TRUSTS *for* CONVERSION, *and* USUAL TRUSTS *for* WIDOW *and* CHILDREN. VARIATIONS *where Some of the* SONS *are* MINORS.

Commcemt, p. 682; *Beqts of furniture, &c.*, p. 686; *Immediate legacy to wife*, p. 708, *form* VIII.; *Genl legacies*, p. 708; *Continue as in Prec.* IV., *addg, bfe the declaron as to income until conversion:* PROVD ALWAYS, & I declare that my sons shl have the option in succon accdg to seniority [*if any of the sons are minors, insert here*, "on attng the age of 21 yrs,"] *continue form* X., p. 707; *If any of the sons are minors, add,* PREC. XV.

AND I AUTHORISE my exs to carry on my sd business until any son of mine shl have elected to succeed to it, or durg such shorter period as they shl think fit, & for that ppose to retain or employ the capl wch shl at my death, &c., *Continue short form of power to carry on business*, p. 704, *form* V., *omittg the words in brackets*. IN WITS, &c.

XVI.

PREC. XVI.

WILL *of a* TRADER *giving* BUSINESS *to* ELDEST SON CHARGED *with Benefits for* TESTATOR'S WIFE *and* CHILDREN, WITHOUT TRUSTEES. DIRECTION *that the* SON *shall* SECURE *such* BENEFITS *by his* BOND *or* COVENANT. GIFT *of* RESIDUE *to* WIFE *absolutely*.

Bequest of business to son charged with payment of annuity to testator's wife, and of capital sums to his younger children at 21, &c., by instalments.

Commcemt, p. 682. *Beqt of business to the eldest son, A.*, p. 700, *& apptmt of him as special exor*, p. 826, *form* VI.; PROVD ALWAYS, & I declare that the beqt of the sd business & premes hinbfe made to my sd son A. is so made on this express condon that my sd son shl pay to my wife durg her life an anny of £——, &c., p. 720, *form* I., AND THAT in case I shl have any child or chln other than the sd A., who being sons or a son attn the age of 21 yrs, or being daurs or a daur attn that age or marry, the sd A. shl pay the sum of £—— to each such child by eql yrly instalmts of £—— each, whof the first is to be pd to each such son on his attng the age of 21 yrs, & to each such daur on her attng the age of 21 yrs or marryg, wch shl first happen, & a subseqt instalmt is to be pd at intervals of a yr until the sd ppal sum of £—— shl be fully pd & satisfied; AND SHL ALSO pay intt at the rate of —— p.c. p.a. on so much of such respive ppal sums as shl for the time being remain unpd, to commce from the day on wch the first instalmt of ppal is to be pd, togr with the instalmts of the ppal; AND SHL ALSO durg the minority of each son of mine, & the minority & spinsterhood of each daur of mine, pay such sum or sums of moy not exceedg for each child in any one year intt at the rate afsd on his or her expectant portion as the gdians or gdian of such child shl require in writg, such sum or sums to be pd to such gdians or

With interest.

Maintenance

PREC. XVI. and advancement

gdian & to be applied in such mner as they, he, or she shl think fit for the mtce, educon, or benefit of such child: AND SHL ALSO pay to such gdians or gdian such further sum or sums of moy not exceedg in the whole a moiety of the expectant portion of such child as they, he, or she shl require in writg, to be applied by them, him, or her, for the advcemt or benefit of such child, but so that such last-mentd sum or sums shl be taken in pt satisfon of the expectant portion of such child, if the same shl become payable, & as a paymt by anticipon *pro tanto* of the first instalmt or instalmts thof; PROVD ALSO, & I declare that my sd s̃on A., his exs or ads, shl within six calr months after my death, at the expse of my este, enter into a pper bond or covt with my exs, & to their satisfon, for securg the paymt of the anny & ppal sums & intt & other moys hby directed to be pd by him or them unto or for the benefit of my wife, & my other chln; *Genl legacies*, p. 708; [*marshallg clause*, p. 734;] *Gift of residue to wife absolutely*, p. 727, *form* III.; *Apptmt of exs*, p. 826, *Devise of trust, &c., estes of copyhd*, p. 825; *Power to employ agents, &c.*, p. 824; *Apptmt of gdians*, p. 827. IN WITS, &c.

to be secured by bond or covenant.

XVII.

PREC. XVII.

WILL *of* REAL *and* PERSONAL *property* WITHOUT *any trust for* CONVERSION (*a*) *and* DISPENSING *as far as may be with the intervention of* TRUSTEES, PROVIDING *for* WIFE NOT LEGALLY MARRIED *to the testator and his* ILLEGITIMATE CHILDREN *by her.* GIFT *of* ANNUITY *to wife to be* REDUCED *on her* MARRYING *again.* GIFTS *of real and personal estate to* CHILDREN NOMINATIM, *to* VEST IMMEDIATELY, *with* SUBSTITUTION *of* ISSUE *for children dying before testator, and* GIFT OVER *and* ACCRUER *as to* CHILDREN DYING *under* 21 WITHOUT ISSUE.

Commcemt, p. 682; *Specific legacy of furniture, &c.*, p. 686; *Immediate pecuniary legacy to* "my wife A." (*b*), p. 708

Descrip-

(*a*) As to the objections to a will of this frame, see p. 832, note.

(*b*) As to describing her as wife, see *Re Boddington*, 22 Ch. D. 597; 25 Ch. D.

Gift of annuity to wife reducible on second marriage (*c*).

Residue to children.

form VIII. : I BEQUE to my sd wife an anny of £—— durg her life or until she shl marry again, & in the event of her marryg again then a reduced anny of £—— durg the remr of her life for her septe use witht power of anticipon, such respive annies to be pd, &c., p. 720, *form* I. ; *Specific & pecuniary legacies & devises to chln*, pp. 683, 708, 690, *describg each child* (*when first mentd*) *by name, so as to identify it ; Gift of residue to*, "my chln hinbfe named & any chln or reputed chln I may hrafter have by my sd wife A. (all of whom are included in the expression my chln, & their issue in the expression my grandchln when hinafter used)" (*d*), *as tenants in common*,

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tion of wife not legally married.

685, which seems to be at variance with *Lepine* v. *Bean*, L. R. 10 Eq. 160. In the absence of fraud on the part of the wife in concealing from the husband the circumstances which render the marriage invalid, a gift to her as wife will be good, *Pratt* v. *Mathew*, 22 Beav. 328 ; *Meluish* v. *Milton*, 3 Ch. D. 27. The test of the validity of such a gift would appear to be whether or not the word "wife" is such a part of the description as to amount to a condition that she should not take unless she filled the character of wife (per Selborne, L.C., in *Re Boddington*, 25 Ch. D. at p. 688).

(*c*) See another form, p. 720, form VI.

Gifts to illegitimate children.

(*d*) Although "children," *primâ facie*, means lawful children, a bequest to "children," without a more specific description, has, in some cases (as in *Holt* v. *Sindrey*, L. R. 7 Eq. 170 ; *Savage* v. *Robertson*, *id.* 176 ; *Lepine* v. *Bean*, L. R. 10 Eq. 160 ; *Crook* v. *Hill*, L. R. 6 Ch. 311 ; L. R. 6 H. L. 265 ; *Laker* v. *Hordern*, 1 Ch. D. 644 ; *Re Humphries*, 24 Ch. D. 691 ; *Re Bryon*, 30 Ch. D. 110 ; *Re Haseldine*, 31 Ch. D. 511 ; *Re Horner*, 37 Ch. D. 695 ; *Re Harrison*, [1894] 1 Ch. 561 ; *Re Plant*, 43 Sol. J. 63) been held good in favour of existing illegitimate children, where a sufficiently strong indication of intention was apparent, see *Re Walker*, [1897] 2 Ch. 238 ; *Re Parker*, *ib.* 208, as to illegitimate children taking under a gift to "issue," and an illegitimate nephew taking under a gift to "nephews" ; but there is considerable risk of a bequest to illegitimate children in such general terms failing (see instances of failure in *Dorin* v. *Dorin*, L. R. 7 H. L. 568 ; *Paul* v. *Children*, L. R. 12 Eq. 16 ; *Re Ayles*, 1 Ch. D. 282 ; *Megson* v. *Hindle*, 15 Ch. D. 198 ; *Re Bolton*, 31 Ch. D. 542), and the safe and proper course is, to designate the objects, by naming them or otherwise, so as clearly to identify them. It had been supposed that a gift by will to future born illegitimate children, whether of the testator himself, or another person, was wholly invalid, on the ground of public policy, but the contrary has been established by recent cases as to children born, or begotten, after the will in the testator's lifetime (*Occleston* v. *Fullalove*, L. R. 9 Ch. 147 ; *Re Goodwin*, L. R. 17 Eq. 345 ; *Crook* v. *Hill*, 3 Ch. D. 773 ; *Re Hastie*, 35 Ch. D. 728). These cases, however, leave untouched the rule that there cannot be a valid gift to a future illegitimate child described solely by reference to its paternity (*Re Bolton*, 31 Ch. D. 542). Where the gift is to the future children of a man, or of a woman by a particular man, it is safer, in the present state of the authorities, if the gift is extended to after-born children, to say, "children, or reputed children," as in the text, having regard to the rule of law, that evidence of the paternity is not admissible (see

PREC. XVII.

Substitution of issue for children dying in testator's lifetime.

Gift over and accruer as to children dying under 21 without issue.

p. 727, *form* III.: PROVD ALWAYS, & I declare that if any of my sd chln shl die in my lifetime leavg issue livg at my death (*a*), such issue shl take by substiton, if more than one, in eql shares as tenants in common, all the ppty whether real or psonal wch such deced child wd have taken if survivg me under the respive devises & bqts contd in this my will; PROVD ALSO & I further declare that if any of my sd chln shl die in my lifetime witht leavg issue livg at my death, or shl survive me & aftwds die witht havg attned the age of 21 yrs & witht leavg issue livg at his or her death, then all the ppty whether real or psonal hinbfe specifically devised & bequed, & also the pecuniary legacies bequed to the child so dying, shl, as from the time of the death of the survor of myself & such child, sink into my residy este, & the share of my residy este, whether real or psonal, hinbfe given to such child, inclusive of

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the judgment of Mellish, L.J., in *Occleston* v. *Fullalove*). It seems, however, that where the gift is necessarily, from the circumstances of the case, to illegitimate children, as where a marriage between the parties is impossible, or where (as in this Precedent) the gift is to the testator's own children, and would therefore be revoked by a marriage (assuming that it is not under a special power of appointment within the exception in s. 18 of the Wills Act), the expression "children," *simpliciter*, may be used, so as to avoid referring on the face of the will to the illegitimacy, and that effect would be given to such a bequest in favour of all children born in the testator's lifetime, and acknowledged and recognised by the putative father as his (see *Re Goodwin*, *ubi supra*). As to a gift to children legitimated by subsequent marriage by the law of the father's domicil, see *In re Andros*, 24 Ch. D. 637; *Re Grey*, [1892] 3 Ch. 88. It is established by the cases above referred to, that, if such a gift to a class fails as to some of the intended objects (as where it extends to children born after the testator's death), the whole fund will go to the remaining objects. As to illegitimate "relations," see *Re Jodrell*, 44 Ch. D. 590; [1891] A. C. 304; *Re Deakin*, [1894] 3 Ch. 565.

Children born before marriage.

A limitation to "A. the child of B. & C.," where B. and C. are husband and wife, and A., their child, was born before the marriage, at the time when they lawfully could marry, is valid, although A. has not acquired the reputation of being their child, see *Moyle Finch's Case*, 6 Rep. at 65a.

In lieu of "chln or reputed chln, &c." in the text, it might be better to say, "chln of my sd wife A. who may hrafter be born in my lifetime or within 9 months after my death;" see *Re Hastie*, *ubi supra*.

It should be borne in mind that a will in favour of a reputed wife and the testator's children by her would be revoked by his subsequently marrying her, *Warter* v. *Warter*, 15 P. D. 152.

(*a*) As the children are illegitimate, a bequest to a child so dying would not, of course, be saved from lapse by the 33rd section of the Wills Act.

any share accruing to him or her by virtue of this psnt provon, shl go & accrue to the others or other of my sd chln or grandchln to whom my residy este is hinbfe given, if more than one in the same shares & proportions in wch my residy este is hinbfe made divisible, & be added to & devolve with their, his, or her origl shares or share; *Managemt, mtce, & accumulon clause*, p. 778, *form* XVII., *mutatis mutandis* (*b*); *Advcemt clause*, p. 780, *form* XX., *mutatis mutandis; Addon to advcemt clause providg for valuon*, p. 758: PROVD ALWAYS & I declare that my trees shl invest every legacy & all moys formg pt of any share of my residy psonal este hby given to an infant at their discron & in their names, &c., *investmts & power to vary, see* p. 738, *form* XVI., & shl transfer such investmts to any pson or psons of full age becomg absolutely entled thto; *Power to trees to appropriate fund to answer annies*, p. 724; *Clause givg powers of leasg, sale, &c., by reference to S. L. Acts*, p. 786; *Add any other clauses with reference to the Acts wch may be required, as in Prec.* IV. (*c*); AND I also empower my trees at any time or times with the consent in writg of such of my sd chln as shl then be livg & of full age, or the majority in no. of them, & if there shl be no such child at the discron of my trees, to appropriate any pt of my residy este whether real or psonal in or towards satisfon of any share thof, with power for that ppose conclusively to determine values in such mner as they shl think fit, *Add provo at end of form* VII., p. 734, *mutatis mutandis; Power to trees to settle questions*, p. 824; *Clauses as to apptmt & indemnity of trees*, pp. 820, 823; *Apptmt of exs & trees*, p. 826; *Devise of trust, &c., estes of copyhd*, p. 825; *Power to employ agents, &c.*, p. 824; *Apptmt of gdians* (*d*), p. 827. IN WITS, &c.

Investment clause.

Power to appropriate property specifically.

(*b*) As the property is a mixed fund and is given without any trust for conversion, and without trustees, it is better to insert express management and maintenance clauses, as the C. A., 1881, s. 43, does not apply (even if it would otherwise have done so, as to which see p. 477, note); and s. 42, though possibly applicable as to real and leasehold property, would require modification, see p. 479, note.

As to express clauses for maintenance, &c.

(*c*) See p. 833, note.

(*d*) Although this is not a valid appointment, effect would probably be given to it by the Court.

XVIII.

PREC. XVIII.

WILL *of* PERSONAL *property, and* REAL *estate situate* ABROAD, PROVIDING *for* WIFE *by a bequest in trust of a* LEASEHOLD HOUSE *and* FURNITURE, *and* LIFE ANNUITY. *Gift of* RESIDUE, *including land in a* COLONY, *in trust for* CONVERSION, *the proceeds being* SETTLED *on the Testator's* MALE ISSUE (*a*), *with* POWER *to male* TENANTS *for* LIFE *to* CHARGE ANNUITIES *for their* WIDOWS *and* PORTIONS *for their* YOUNGER CHILDREN. ULTIMATE *Trust for Testator's* DAUGHTERS. POWER *to* SELL *the* HOUSE *and* FURNITURE, *and* PURCHASE *another* HOUSE *and* FURNITURE. *The beneficiaries are put to their* ELECTION *to* CONFIRM *the* DEVISE *of the* LAND ABROAD (*b*); *Declaration as to* DOMICIL, *&c.*

Declaration as to domicil, &c. (*c*).

Commcemt, p. 682; I declare that inasmuch as I have an English domicil it is my wish & intention that this my will & any codl I may make shl be construed & operate as far as the case admits, accdg to the law of England: *Specific legacies*, p. 683; *Beqt of leasehd house & furniture to trees for wife for life, with remr to testor's eldest son K.*, p. 698, *form* IV.; *Specific devises*, p. 690; *Immediate pecuniary legacy to wife*, p. 708, *form* VIII.; *Legacy to testor's yor chln at* 21, *&c., with interim mtce*, p. 711, *form* XVIII.; *saying*, "such of my chln except the sd K."; *Beqt of anny to wife for life*, p. 720, *form* I.; *Diron to appropriate fund to answer it*, p. 724, *form* XV., *mutatis mutandis*; *Beqt of residy realty & psonalty to trees*, p. 729, *form* VIII., *saying*, "all my estes, situated in the colony

Residuary gift in-

As to entailing land in a colony.

(*a*) If the testator's real estate is in England, or in a colony where the English law of entail prevails, the scheme of settling the property on the eldest son would probably be best effected by devising the land in strict settlement, and giving the personalty on the trusts of the proceeds of a sale under the power, as in Precedent XXVIII., p. 882. In any case an entail might in general be created by a devise in trust for sale and for reinvestment in the purchase of land in England to be entailed. But it would be desirable to enquire into the *lex loci situs*; see *infra*, p. 863, note.

(*b*) See also Precedents XIX. and XX., and p. 863, note, as to wills affecting land abroad.

(*c*) See as to this declaration, *Bradford* v. *Young*, 26 Ch. D. 656; 29 Ch. D. 617, *post*, p. 831, note.

of ——, & all other my real & immovable estes & hds of every tenure, includg leasehds, whether situate in the United Kingdom, or any colony or dependency thof;" *Trust for conversion*, p. 729, *form* I. (*d*), [*If K. is a tree, insert power to him to pchase*, p. 732, *form* V.]; AND I DECLARE that my trees shl, &c., *Trust of proceeds to pay debts, &c.*, p. 734, *form* IX., [*with marshallg clause*, p. 734]: *For investmt of residue, with power to vary*, p. 738, *form* XVI., with the consent in writg of the pson or psons of full age, if any, for the time being entled to the income of the sd trust premes, & orwise at the discron, &c.; AND SHL pay the income of the trust premes constitutg or representg my sd residy este, to the sd K. durg his life, AND AFTER HIS DEATH shl stand possed of the sd trust premes, & the income thof, in trust for such son of the sd K. as first or alone attns the age of 21 yrs, absolutely; AND IF there shl be no such son of the sd K., then my trees shl hold the sd trust premes, & the income thof, upon trusts in favour of each of my sons in succon, accdg to seniority, & such son of his as shl first or alone attn the age of 21 yrs, similar to those hinbfe decld in favour of the sd K., & such son of his as afsd, but so that no yor son of mine, or son of such yor son, shl be entled under the trusts afsd, until after the death of every elder son of mine, & unless every such elder son shl die witht havg a son, who eir bfe or after his father's death attns the age of 21 yrs; PROVD ALWAYS & I declare that it shl be lful for every son of mine hby made tenant for life of the sd trust premes, eir bfe or after he shl become entled to the rect of the income thof in posson, but subjt & witht prejudice to the trusts & powers precdg his life intt, & to the intts created in exercise of such powers, eir bfe or after his marre, by deed revocable or irrevocable, or by will or codl, to appt unto or for the benefit of his wife in the event of her survivg him, for her life, or any less period, an anny of £——, or any less anny, to be chged upon all or any of the

cluding colonial property.

Trusts.

Invest-ment.

Eldest son for life.

Remainder for his eldest son, &c.

Gift over to other sons of testator and their male issue in succession.

Power to each son to charge annuity for wife.

(*d*) In a will dealing with land in a colony not given absolutely, a trust for conversion should in general be inserted, so that the proceeds may be disposed of according to English law, and to exclude as far as may be questions as to the application of colonial law; and express powers of management and leasing, &c., until sale should be inserted, as the recent legislation enabling such powers to be omitted is, of course, not applicable; and for the same reason the full trustee clauses should also be inserted.

As to wills dealing with land in a colony.

PREC. XVIII.

sd trust premes (but preferentially & as far as the same will extend on my psonal estate (*a*)), & to be payable, witht dedon except for legacy or succon duty, at such times & in such mner as the son of mine exercisg this psnt power may think fit; And I declare that the power lastly hinbfe contd may be exercised as often as the son exercisg the same shl marry;

and portions for younger children.

PROVD ALSO & I declare that it shl be lful for every son of mine hby made tenant for life of the sd trust premes eir bfe or after he shl become entled to the income thof in posson, but subjt & witht prejudice to the trusts & powers precedg his life intt, & to the trusts created in exercise of such powers, eir bfe or after marre, by deed revocable or irrevocable, or by will or codl, to chge all or any of the sd trust premes (but so that such chge shl be made preferentially on my psonal este as afsd) with the paymt for the portion or portions of his yor child or chln by such marre, meang thby any child or chln, who being a son or sons attn the age of 21 yrs, or being a daur or daurs attn that age or marry (other than his first or only son who attns the age of 21 yrs), or the issue of any such yor child or chln, such issue to be born & take vested intts within 21 yrs from the death of the son of mine exercisg this power, of a sum or sums not exceedg in the whole £——, such sums to be an intt vested, &c., *continue as in* p. 605, *down to the end of the form, mutatis mutandis, substitutg* "the son of mine exercisg this power," *for* "the sd, *husbd*," *& omittg the referces to the husbd's father & the power to limit a term ; Provo as to cases when chges of rent-chges or portions take effect,* p. 606, *form* XLI., *substitutg* "anny" *for* "rent-chge," *& saying,* "become entled in posson to the income of the sd trust premes." *Provo limitg total amt chgeable for annies & portions,* p. 607, *form* XLII., *mutatis mutandis, saying,* "have preferce & priority accdg to the order of priority of the trusts in favour of the sons of mine by whom the same resply shl be chged;"

Ulterior trust for daughters of eldest son of testator.

PROVD ALWAYS & I hby declare that in case the trusts hinbfe decld of the sd trust premes representg my residy este shl fail or determine, then subjt & witht prejudice to the trusts & powers hinbfe decld & contd, so far as the same shl take effect, my trees shl stand possed of the sd trust premes, & the

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(*a*) See p. 734, note.

income thof, in trust for all or any the daurs of the sd K., who attn the age of 21 yrs or marre, & if more than one in eql shares; AND IF THERE shl be no such daur of the sd K., upon trusts in favour of the daurs of each of my yor sons in succon, similar to those lastly hinbfe contd in favour of the daurs of the sd K., but so that no daur or daurs of any yor son of mine shl be entled under the trusts afsd, except in the event of the default or failure of daurs of every elder son of mine; AND IN CASE there shl be no such daur as afsd of any of my sons, then subjt & witht prejudice to the trusts & powers hrin decld & contd, my trees shl stand possed of the sd trust premes in trust for all or any my own daurs or daur who survive me, & attn the age of 21 yrs, or marry, or die in my lifetime leavg issue survg me, & if more than one, in eql shares: *Mtce & accumulon clauses as to sons, & daurs & grandchln*, p. 774, *form* v., *mutatis mutandis; Advcemt clause*, p. 776, *form* IX.; PROVD ALWAYS & I hby declare that in case any of the devises, beqts, or dispons hrin contd of my real or leasehd or immovable ppty, situate in the sd colony of ——, or elsewhere abroad, wd but for this psnt provo fail wholly or partially to take effect, owing to this my will being for any reason ineffectual to dispose of the same, the same shl take effect under the doctrine of election, & so as to be thby bindg on my wife, & chln, & grandchln, & the husbds of any daurs or grand-daurs of mine, & all other psons intted hrunder, all of whom shl accdly, at the reqt in writg & to the satisfon of my trees, & at the cost of my este, &, as regards my chln & grandchln, as they shl resply attn the age of 21 yrs, exte, complete, perfect, & do all such assurces, instrumts, & acts as may be deemed necy for evidencg such election, & givg full effect to such devises, beqts, & disposons accdg to the laws applicable thto; And I declare that in case my sd wife or any child or grand-child of mine or the husbd of any daur or grand-daur of mine or other pson inttd hrunder shl refuse or neglect to comply with any such reqt in writg of my trees, or shl orwise fail to exte, complete, perfect, or do such assurces, instrumts or acts as afsd or any of them, then (*b*) the pson so

In default, for daughters of testator's younger sons.

Ultimate trust in default of issue of testator's sons for testator's daughters.

Clause putting beneficiaries to election as to foreign or colonial property.

(*b*) The following provision, substituting compensation for forfeiture, might be substituted for the rest of this clause:—

"The pson or psons who shl be disappted by such refusal

Provision

PREC. XVIII.

neglectg or refusg, & his or her chln (or in the case of the husbd of a daur or grand-daur of mine, such daur, or grand-daur & her chln), shl forfeit all benefits hby, or by any codl hto, given to him, her, or them, & the same not being an intt in my residy este shl fall into my residy este, & being an intt in my residy este shl go to the other psons entled to my residy este as if my wife, or child, or grand-child incurrg such forfeiture, had died bfe me, & in the case of a child or grand-child of mine, witht issue, & had not taken any intt in my residy este under this my will; *Declaron as to income until conversion*, p. 736, *form* XIII.; *Power of managemt of* "the real, leasehd, & immovable ppty (whether in England or abroad, hinbfe devised & bequed in trust for sale," p. 782; *Leasg power*, p. 784; *Power to raise moy on mtge*, p. 735; *Power to appt agents to get in or manage ppty abroad*, p. 821; *Power to trees to sell house & furniture bequed to wife for life*, p. 789; And the moy arisg thfrom shl sink into my residy este, but so that my wife shl durg her life be entled to the income arisg from the same; PROVD ALWAYS & I empower my trees at any time, at the reqt in writg of my wife, to lay out any sum arisg from a sale of the sd furniture & effects, or any pt thof, under the power lastly hinbfe contd, in the pchase of furniture or househd effects, to be held upon the like trusts as are hinbfe decld concerng the furniture & effects bequed in trust for my wife for life, & also to lay out any sum arisg from a sale of the sd leasehd premes hinbfe bequed to her for life in the pchase of a messe, &c., *continue power to pchase a house as residce for wife*, p. 788, *mutatis mutandis, saying*, "upon the like trusts as are hinbfe decld concerng the sd leasehd messes hinbfe bequed in trust for my wife for life, or as near thto as circes shl admit;" [*If the testor has any land in England insert such of the clauses havg reference to the S. L. Acts as may be required; see Prec.* IV.]; *Power to trees to settle questions*, p. 824; *Tree's rect clause*, p. 818, *see note* (*b*); *Power to appt new trees*, p. 818; [*Power to appt*

Power to sell house and furniture, with ancillary clauses.

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for compensation.

or neglect shl be compensated in respt thof out of the benefits hby given to the pson or psons so refusg or neglectg in such mnr as my trees shl direct, whose decision shl be final."

special trees of ppty abroad, p. 819, *Power to delegate trusts to resident trees*, p. 822, *form* XII.; *Declaron as to moy reced by resident trees*, p. 822]; *Trees' indemnity & reimbursemt clause*, p. 823, *form* XIV.; *Declaron as to devolon of trees' powers*, p. 825; *Apptmt of exs & trees*, p. 826, *Power to exs & trees to compromise*, p. 827; *Devise of trust, &c., estes of copyhd & of freehds in the colonies*, p. 827; *Power to employ agents, &c.*, p. 824; *Apptmt of gdians*, p. 827. IN WITS, &c.

XIX.

PREC. XIX.

WILL *of Man having* PROPERTY, *in a* COLONY, *appointing* DISTINCT TRUSTEES *and* EXECUTORS *for* PROPERTY *in* ENGLAND *and the* COLONY, *and giving* RESIDUE *in trust for* WIFE *during* WIDOWHOOD, *remainder as to a* FIXED SUM *for* DAUGHTER, *if* LIVING, *subject to her* MARRYING *with* CONSENT *of* MOTHER, *otherwise to her Issue.* RESIDUE *to a* SON *if* LIVING. SUBSTITUTED *gifts to the* ISSUE *of the Son and Daughter, if dead at time of distribution.* CROSS TRUSTS *on* FAILURE *of the* PRIMARY *Trusts, and* ULTIMATE *Trust for a* BROTHER *or his Issue.* PROCEEDS *of* COLONIAL *property, after payment of expenses and debts there, to be* REMITTED *to* ENGLAND. POWER *to* COLONIAL TRUSTEES *on returning to England to* ACT *as* ENGLISH TRUSTEES. SPECIAL TRUSTEE *and* EXECUTORSHIP *Clauses.*

Commcemt, p. 682; *Specific legacies*, p. 683; *Immediate pecuniary legacy to wife*, p. 708, *form* VIII.; *Genl legacies*, p. 708 *et seq.*; *Gift of realty & residy psonalty*, "except the real & psonal este & ppty in the colony of —— hinafter devised & bequed to my colonial trees, & except what I orwise dispose of by this my will, or any codl hto," *to English trees A. & B.*, p. 729, *form* VIII.; *Upon trust for conversion*, p. 729, *form* I.; *To pay debts, &c.*, p. 734, *form* IX., "other than the debts owing by me in the sd colony, the paymt whof is hinafter provd for, but inclusive of such debts in case & so far as such provon

Gift of residue, except property in colony.

Trusts.

Income to wife during widowhood.

Trusts of fixed sum.

For daughter, if living, unless she marries without consent.

Substitution of issue for daughter, if dead.

Gift over on marriage of daughter without consent to her children.

Subject to trust

for the paymt thof shl be insufft;" [*Marshallg clause*, p. 734]; *For investmt of residue*, p. 738, *form* XVI.; *For paymt of income to widow durg widowhood*, p. 740, *form* I.; AND AFTER the death or re-marre of my sd wife, wch shl first happen, shl raise out of the sd trust premes the sum of £—— & shl hold the same sum upon the trusts & subjt to the powers & provons follg (that is to say), UPON TRUST to pay the same to my daur L. for her absolute benefit in case she shl be livg at the death or re-marre of my wife, or at my death if my wife shl die bfe me (wch time is hinafter sometimes called the time of distribon), & shl be then unmarried or shl have married durg my lifetime or after my death, with the prior consent or subseqt approval in the latter case of my wife, signified at any time bfe the death or re-marre of my sd wife [or with the prior consent in writg of my trees (*a*)]. AND IN CASE my sd daur shl have married durg my lifetime or after my dece, with such consent or approval as afsd, & shl have aftwds died bfe the time of distribon, then in trust for the child or chln of my sd daur who shl be livg at the time of distribon, & shl, being male, attn the age of 21 yrs, or being female, attn that age or marry, if more than one, in eql shares; BUT IN CASE my sd daur shl marry after my death & durg the widowhood of my sd wife witht such consent or approval as afsd, then upon trust, *for chln or remoter issue of daur as widow shl appt*, p. 745, *form* II. *or* III.; AND IN DEFAULT of & subjt to any such apptmt upon trust, whether my sd daur shl be livg or dead, for the child or chln of my sd daur who shl be livg at the time of distribon or shl be aftwds born bfe the youngest of such chln for the time being in existce attns a vested intt (*b*), & who being male attn the age of 21 yrs, or being female attn that age or marry, if more than one, in eql shares; BUT SO THAT durg the life of my sd daur the income of the sd trust premes shl be pd to the psons who wd be entled thto, or applied in the mner & for the pposes in & for wch the same would be applicable if she were dead; *Hotchpot*, p. 755; [*Provon as to distribon when daur attns a certn age*, p. 772, *form* XV.]; PROVD ALWAYS & I declare that if the

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(*a*) The words in brackets are intended to provide for the disability of the wife owing to illness.

(*b*) See above, p. 747, note (*b*).

sd sum of £—— shl not become absolutely vested under the trusts afsd, then the same sum & the income thof, & all accumulons thof, or so much thof as shl not become vested or be applied under the trusts & powers hrin decld & contd, or the powers by law vested in my trees, shl, subjt & witht prejudice to the trusts & powers afsd, sink into the residue of the sd trust este & premes, & be subjt to the trusts & provons hinafter decld & contd concerng the same; AND I HBY further declare that the residue of the sd trust este & premes after raisg the sd sum of £—— shl, from & after the death or marre of my wife, or from & after my death, shd she die bfe me, be held by my trees upon the trusts & subjt to the powers & provons follg, that is to say, IN TRUST for my son —— if he shl then be livg for his absolute benefit, & in case he shl have died, then in trust for the child or chln (if any) of my sd son who shl be then livg & shl, being male, attn the age of 21 yrs, or being female, attn that age or marry, if more than one, in eql shares; AND IN CASE my sd son shl have died witht leavg any such child or chln, then (subjt to the trusts hinbfe decld) upon the like trusts & for the like pposes as those hinbfe decld concerng the sd sum of £——; PROVD ALSO & I declare that if the sd trust premes, includg the sd sum of £——, or any pt or pts thof, shl not become absolutely vested under the trusts hinbfe decld, then the sd trust premes & all accumulons thof, or such pt or pts thof as shl not have become vested or been applied under the trusts & powers hrin decld & contd, or the powers by law vested in my trees shl (subjt to the trust hinbfe decld) be held by my trees in trust for my brother —— absolutely, if he shl be livg at the time of the determinon or failure of the prior trusts hinbfe decld, & if he shl then have died leavg a child or chln then livg, then in trust for such child or chln, if more than one, in eql shares, & in default of any such child or chln then in trust for my cousin —— absolutely; PROVD ALWAYS that it shl be lful for my trees at their discron to invest the sd sum of £——, or any pt thof, in or upon any of the investmts hinbfe authorised, with power at the like discron to vary such investmts, & the investmts for the time representg the sd sum of £—— shl be held upon & for the like trusts & pposes as are hinbfe decld concerng the sd sum of £——; *Power to allot specific ppty in satisfon of*, "the sd sum of £—— or any pt

aforesaid to sink into residue.

Trusts of residue.

For son, if living at time of distribution, if not, for his children.

Ultimate trusts.

Investment clause.

Devise and bequest of colonial property.

Trusts.

thof," p. 733; *Mtce & accumulon clauses*, pp. 772, 773, *forms* I. & II., *or* p. 774, *form* IV. (*a*); *Advancemt clause as to chln & grandchln*, p. 776, *form* IX., *mutatis mutandis; Declaron as to income of real & psonal este until conversion*, p. 776, *form* XIII.; *Power to manage & let until conversion*, pp. 782, 784, *forms* I. & V.; I DEVISE & BEQUE unto —— & ——, hinafter called my colonial trees, all my real & psonal este & effects situate & being at the time of my death in the Colony of ——, exply includg all debts & other choses in action wch shl then be recoverable by action or other legal pcdgs in such colony, upon the like trusts, & subjt to the like powers & provons with respt to the sale, conversion, & gettg in of the same, & managemt & leasg until sale, as are hinbfe decld & contd with reference to my genl este & effects hinbfe devised & bequed to my trees; AND I DIRECT that my colonial trees shl stand possed of the net proceeds arisg from the sale, conversion, & gettg in of the sd real & psonal este & premes hinbfe devised & bequed to them, & of the net rents, profits, & annl income thof until conversion, after paymt throut of all outgoings & expses (*b*) of managemt & realison, or orwise incurred by my colonial trees, & any debts owing by me in the sd colony of —— at my dece, upon trust from time to time to remit such net proceeds, rents, profits, & income as & when the same shl be realised or reced by them to my trees, to be resply held & applied by my trees upon the trusts & in the mner hinbfe provd concerng the proceeds of the realison of my genl este & the income thof resply, but not so as to increase or duplicate the sd sum of £——: I AUTHORISE my trees, except as to any ppty wch may for the time being be legally vested in my colonial trees, & my colonial trees as to such last-mentd ppty, *continue power to determine questions*, p. 824, *saying* "my tree or colonial trees resply;" [*If there is land in England insert any clauses with reference to the S. L. Acts wch may be required as in Prec.* IV.]; AND I DECLARE that the rect of my trees & my colonial trees resply, *continue trees' rect clause*, p. 818, *mutatis mutandis; Power to appt new trees, with varions for sevl sets*, p. 818, *omittg the words as to remaing out of the United Kingdom, & saying*

(*a*) It appears safer to insert the maintenance clause, owing to the testator owning immovable property in the colonies.

(*b*) See *ante*, p. 730, note (*b*).

Power to colonial trustees on returning to England to assume general trusteeship.

after "incapable to act," "or as to my trees or any of them reside abroad, or as to my colonial trees or any of them cease to reside in the colony of ——;" PROVD ALWAYS, & I declare that in the event of the sd —— & ——, *the colonial trees*, or eir of them returng to England, whether in my lifetime or after my death, they or he shl, if willg, be at liberty to assume the genl treeship of my will jtly with the other trees or tree for the time being (if any), or alone if there shl be no other trees or tree, in wch case a deed (*c*) shl be exted for evidencg their or his acceptce of such treeship, & vestg the trust este in them or him, eir jtly or alone as afsd; *Trees' indemnity & reimbursemt clause*, p. 823, *form* XIV.; *Declaron as to devolon of powers of trees*, p. 825; *The same for colonial trees; Apptmt of colonial trees exs* "as to the ppty & premes hinbfe bequed to them," *& of genl trees*, "& the sd, *colonial trees*, if & when they shl resply return to England," *genl exs*, p. 826, *form* VI., *omittg diron as to expse of limd probate:* I AUTHORISE my actg genl exs or exor & my trees for the time being as to my genl este, & my actg special exs or exor & my colonial trees, for the time being as to my este in the sd colony, *To compromise, &c.*, p. 827; *Devise of trust, &c., estes of copyhd, & of freehds in the colonies*, p. 827; *Power to employ agents, &c.*, p. 824; *Apptmt of gdians*, p. 827. IN WITS, &c.

Appointment of executors.

XX.

CONCURRENT WILL *disposing of* REAL ESTATE *in a* FOREIGN COUNTRY (*d*).

Commcemt, p. 682, *form* III.: I HBY DEVISE all my real & immoveable ppty (includg leasehds) situate in the Kingdom

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(*c*) As to the desirability of having a deed in such a case, see *Re Arbib*, [1891] 1 Ch. 601.

As to wills of property situate abroad.

(*d*) Where the testator is possessed of land situate in a colony or foreign country, or in Scotland, it may be necessary, or more convenient, to make a separate will as to such property. As to wills of Scotch property, see "The Titles to Land Consolidation (Scotland) Act, 1868," 31 & 32 Vict. c. 101, ss. 19, 20, 21; and "The Conveyancing (Scotland) Act, 1874," 37 & 38 Vict. c. 94, ss. 38, 39, 40, 46, 51; Bell's Commentaries on the Law of Scotland, PREC. XX.

[Republic] of —— to K. of ——, and L. of ——, for all my este & intt thrin, [& I hby institute them my hrs in respt thof],

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Vol. I., p. 324. As to wills of persons domiciled in Scotland, see *Re Craignish*, [1892] 3 Ch. 180; and see generally as to wills of property in Scotland, or the colonies or foreign countries, the valuable Appendix to Jarman on Wills, Vol. II., pp. 1668 *et seq.* As to probate in this country where there is a separate will of foreign property, see *Re Astor*, 1 P. D. 150; *Re Callaway*, 15 P. D. 147; *Re Granet de la Rue*, *ib.* 185; *Re Seaman*, [1891] P. 253; *Re Fraser*, *ib.* 285; *Re Tamplin*, [1894] P. 39. As to administration where there is a foreign will disposing of property abroad, but an intestacy as to property in this country, see *Re Mann*, *ib.* 293. The recognition in this country of probate and letters of administration granted in British possessions has been provided for by the Colonial Probates Act, 1892 (55 Vict. c. 6).

Occasionally there may be doubts whether a testator is domiciled in England or in Scotland or abroad; and as the construction of a will of *personalty* and the rights of persons claiming under it are regulated by the law of the testator's domicil (though as far as regards construction it seems that this rule may give way to a distinct expression or indication of a contrary intention, see *Bradford* v. *Young*, 26 Ch. D. 656; 29 Ch. D. 617), it will be proper in this case to have the will settled both by an English and a Scotch or foreign lawyer, so that it may take effect, whatever his domicil may be. See as to the form of the execution of a will of *personalty* by a British subject wherever domiciled, 24 & 25 Vict. c. 114, which, however, it should be borne in mind, does not affect the formalities required by the Wills Act, ss. 9 and 10, as to a will made in exercise of a power (*Re Kirwan*, 25 Ch. D. 373; *Hummel* v. *Hummel*, [1898] 1 Ch. 642, discussed, 14 L. Q. R. 338; *Re Merlin*, [1898] W. N. p. 56).

The construction of a will disposing of *land* is regulated by the *lex loci situs*, and, therefore, such a will should be settled by a lawyer conversant with the law of the place where the land is situate. In case, however, the testator is *in extremis*, so that there is no time to procure the assistance of a foreign lawyer, the better course appears to be, to make a short concurrent will, disposing only of the foreign land, and in the principal will to put all persons to their election to confirm it (see the form of an election clause at p. 857).

The question whether the formalities necessary for the validity of a will disposing of land are those of the *lex loci actus*, or the *lex loci situs*, is answered differently by the laws of different countries, but according to the better opinion this also should be governed by the *lex loci situs*: see Story, Conflict of Laws, sec. 474 *et seq.* The safer course, in the absence of special information, is to execute the will so that it will be valid in either case. It is apprehended that a holograph will, dated and signed by the testator (which is valid in most countries where the law is founded on the Civil Law) and executed in the presence of three witnesses, all signing at the same time in the presence of the testator and each other, so as to have been valid under the Statute of Frauds, would be valid in most countries; it would appear, however, that witnesses are not necessary according to French law (*Re Kirwan*, *ubi supra*).

See further on this subject and generally on the question by what local law wills are governed, 1 Jarm. Wills, ch. 1; and as to the colonies, see 4 Dav. Prec. 347, the information in which, however, requires to be brought up to date. As to the wills of aliens, see *Bloxam* v. *Favre*, 8 P. D. 101; 9 P. D. 130.

As to frame of Precedent.

With regard to the above Precedent it should be borne in mind that in some countries, such as France and elsewhere, where the Code Civil prevails, the

UPON TRUST to sell the same & to let and manage the same in the meantime with the same discronary powers as to the time & mode of sale & orwise in relon thto, & as to the lettg & managemt of the ppty as if they were absolute owners thof & to give effectual rects for the pchase moy & rents thof, AND UPON TRUST TO pay and remit the net proceeds of such sale & the net rents & profits in the meantime (after paymt of all expses & outgoings) to M. of ——, & N. of ——, or other my actg exs or exor for the time being in England to be held by them or him upon the trusts & for the pposes decld concerng the same by my will, bearg even date hrwith, whose rect shl be an effectual dischge for the same & exonerate the psons or pson payg the same from all further responsibility in relon thto. IN WITS, &c.

PREC. XX.

XXI.

WILL *of a* WIDOW *in favour of her* CHILDREN *or* ISSUE UNDER *a* SPECIAL POWER *of Appointment contained in her Husband's Will, and declaring* TRUSTS *of her* OWN PROPERTY *by Reference.*

PREC. XXI.

Recital of husband's will.

Commcemt, p. 682; WHAS my late husbd K. by his will dated, &c., & proved with a codl on, &c., directed that the trees thof shd stand possed of the investmts thby directed to be made of the proceeds of the sale callg in & conversion thby directed to be made of his real & residy psonal este & of the other moy formg pt of his este, & of the income of such investmts, & of the rents, profits, & annl produce of such real & psonal este until the conversion thof, upon trust after my death for such one or more, &c., *continue recital of power of apptmt among chln or remoter issue;* NOW IN EXERCISE of the sd recited power & of every or any other power in this

Appointment.

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power of testamentary disposition is restricted (though possibly such restrictions as those contained in that code may not apply to a British subject, see Jarman, p. 1669, note); and also that the machinery of trusts is in some countries unknown.

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behalf me enablg, I APPT & DECLARE that the trees or tree for the time being of the sd will of my sd husbd shl from & after my dece stand possed of the trust funds & ppty representg or constitutg the residy real & psonal este of my sd husbd, or the proceeds of the sale callg in & conversion thof, & of the income & annl produce thof, upon the trusts & subjt to the powers & provons hinafter decld & contd concerng the same, that is to say, *trusts for chln & their issue, see Prec.* IV. (*a*); [*Mtce & accumulon clauses*, p. 773]; *Advcemt clause*, p. 776, *mutatis mutandis*, [*except that the investmt of the accumulons under an express trust shd be in secs authorised by the instrumt creatg the power*] *& substitutg* "the trees or tree of the sd will of my sd husbd," *for* "my trees;" *Specific legacies*, p. 683; *Genl legacies*, p. 708; *Gift of residue of testrix's own ppty to trees of will*, p. 729, *form* VIII.; *Upon trust for conversion*, p. 729; *to pay debts, &c.*, p. 734; [*Marshallg clause*, p. 734]; *For investmt of residue*, p. 738; AND SHL stand possed of my sd residy trust este & the income thof upon the like trusts and subjt to the like powers & provons as are hinbfe decld & contd concerng the sd trust premes representg or constitutg the residy este of my sd late husbd, with the substiton of my trees for the

Trusts of residue by reference.

Points to be attended to in wills exercising powers of appointment among children or issue.

(*a*) In wills exercising special powers of appointment the points mentioned in the note, Vol. I., p. 69, require attention. If it is desired to provide for the event of a child dying in the lifetime of the testator, this cannot be done by an appointment to the deceased child or its representatives (the 33rd section of the Wills Act not applying to appointments under special powers, see *Holyland* v. *Lewin*, 26 Ch. D. 266), and the only course in such a case will be, to appoint a share to the issue of the deceased child (if they are objects of the power) by substitution, or to leave the share unappointed, so as (if the case admits of it) to devolve on the representatives of the deceased child under the trust in default of appointment, with the aid of the hotchpot clause. Sometimes, however, an appointment in excess of the power may be made effectual, by giving benefits to the persons entitled in default of appointment, and putting them to their election to confirm it. A testamentary appointment may be a fraud upon a power, *Re Kirwan*, 25 Ch. D. 373; *Re Perkins*, [1893] 1 Ch. 283.

As to frame of Precedent.

As the power of appointment in the above Precedent is derived under the will of the husband of the testatrix and not under their marriage settlement, so that the children were *in esse* at the time of the creation of the power, the usual trusts settling the shares appointed to the children on them for life with remainder to their issue (as they are objects of the power) at 21, &c., may be inserted; but a power of appointment among the issue, or a trust creating a protected life interest, must not be inserted.

A will exercising a power must be executed in the usual manner, although special formalities may be required by the power; see s. 10 of the Wills Act.

trees of his will: PROVD ALWAYS & I declare, &c., *ultimate trusts of residy este*, p. 768; *Declaron as to income until conversion*, p. 736; *The rest of the Prec. may be as in Prec.* IV., *includg the apptmt of gdians* (*b*). IN WITS, &c.

PREC. XXI.

XXII.

WILL *under* SPECIAL POWERS *of Appointment in a Settlement and prior Will appointing a* LEGACY *to a* DAUGHTER, *and subject thereto* ONE MOIETY *of the Funds to a* SON *for* LIFE DETERMINABLE *on* BANKRUPTCY, *&c., with remainder to his* CHILDREN, *and the* OTHER MOIETY *to a* DAUGHTER *for* LIFE, *with remainder to her* CHILDREN, *and disposing of the Testator's* OWN PROPERTY *in like manner.* HOTCHPOT *Clause* (*c*).

PREC. XXII.

Recital of powers.

Commcemt, p. 682; WHAS under or by virtue of the settlemt made on my marre with my late wife, dated, &c., & the will dated, &c., & a codl thto dated, &c., of my late father, wch were resply proved, &c., divers trust funds & ppty are settled in trust (but as to the trust premes settled by the sd will & codl of my sd father subjt to the life intt of my mother thrin) for myself durg my life, & after my dece upon trusts for my issue under wch I have a testy power of apptmt over such respive trust funds & ppty in favour of all or any exclusively of the others or other of my chln or remoter issue in such shares & mner as I may think fit; NOW IN EXERCISE of the respive powers for this ppose given to me by the sd settlemt, & will & codl resply, & of all other powers, if any, enablg me in this behalf, I do hby direct & appt that the trees or tree for the time being of my sd marre settlemt shl as soon as may be after

Appointment of sum of money.

(*b*) See as to guardians, p. 827, note.

(*c*) See notes Vol. I., p. 69, and Vol. II., p. 866, especially as to the determinable life estate of the son, and as to the form of the trust for the issue of the son and daughter. The object of the hotchpot clause at the end of the will is to redress any inequality caused by the possible exclusion of some of the children from sharing in the appointed funds. The validity of such a clause in a will made in exercise of a special power of appointment (where the instrument creating the power contained no hotchpot clause) is free from doubt, see *Re Buckley*, W. N. [1893] p. 95.

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my dece, by or out of the trust funds & premes held upon the trusts of the sd settlemt, raise or set apt & appropriate the sum of £—— or trust funds or investmts wch such trees or tree shl deem to be of equivalent value, & shl stand possed of the same or of the trust funds & premes from time to time representg the same (& so that such approprion shl not affect the power of transposg investmts in my sd marre settlemt contd); UPON THE LIKE TRUSTS & subjt to the like powers & provons for the benefit of my daur L. & her issue, & with the like ulterior trusts for the benefit of my son M. & his issue in the event of the default or failure of the issue of my sd daur as are hinafter decld & contd concerng the moiety of the residue of the sd trust premes in favour of my sd daur & her issue & orwise as hinafter mentd; AND I FURTHER appt & direct that all the residue of the sd trust funds & ppty held upon the trusts of my sd marre settlemt & also all & singr the trust funds & ppty held upon the trusts of the sd will & codl of my sd father as afsd, & the trust premes from time to time representg the same resply, shl from & after my dece remain & be, & that the trees or tree for the time being of the sd settlemt & will & codl resply shl stand possed thof resply (but subjt as to the trust premes held under the sd will & codl to the life intt of my mother thrin); UPON THE TRUSTS hinafter decld concerng the same, that is to say, As to one moiety of the sd respive trust premes; UPON TRUST that the sd respive trees or tree shl pay the income of the sd moiety to my son durg his life unless some act or event shl have happened durg my lifetime or until some act or event shl happen within 21 yrs after my death, whby if the same income belonged absolutely to him, it wd have become vested in or charged in favour of some pson or psons or a corporon. *Trust of income after forfeiture for the psons who wd be entled if the son were dead*, p. 743, *form* VIII., AND FROM & after the dece of my sd son the sd respive trees or tree shl stand possed of the capl & income of the sd moiety of the sd respive trust premes, IN TRUST for the chln or child of my sd son who shl be born in my lifetime & shl attn the age of 21 yrs, or in the case of daurs marrying under that age, & the chln or child of my sd son who shl be born after my dece (*a*) & shl be livg at the expiron of 21 yrs from my dece,

Upon trusts for daughter and son.

Appointment of residue.

Upon trusts.

As to one moiety for son till bankruptcy, &c.

After death of son for his children.

(*a*) This extension of the appointment to issue born after the testator's death.

or in the case of daurs shl have previously married, & if more than one in eql shares; *Advcemt clause*, p. 776; AND I FURTHER appt & declare that the sd respive trees or tree of the sd settlemt & will & codl resply shl from & after my dece stand possed of the other moiety of the sd respive trust funds & ppty held upon the trusts of the sd settlemt & will & codl resply (subjt as afsd), & the trust premes representg the same resply & the income & annl produce thof resply, UPON TRUST to pay such income & annl produce to my sd daur L. durg her life for her septe use, witht power to anticipate the same durg 21 yrs from my death (*b*), AND FROM & after her death as

Appointment of other moiety.

Upon trust for daughter for life and for her children.

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though not too remote, as the shares are made to vest within 21 years from his death, would often go beyond the power, which is commonly restricted to issue born in the appointor's lifetime.

The following is a form, where the power arose under the testator's marriage settlement, by which the grandchildren take vested interests subject to be divested on death under 21, &c., framed so as not to be too remote :—

"PROVD ALWAYS & I direct & appt that my trees shl stand possed of the share hinbfe appted to my daur X. & the investmts thof upon trust to pay the income of such share to the sd X. durg her life for her septe use, & witht power to anticipate the same durg 21 yrs from my death, & from & after her death shl stand possed of the sd share & the investmts & annl income thof, In trust for such of the chln of the sd X. as shl be born within 21 yrs after my dece, & if more than one in eql shares, Provd always & I direct that the share of any son of the sd X. who shl die a minor bfe the expiron of 21 yrs after my death & the share of any daur of the sd X. who shl die a minor & unmarried bfe the expiron of 21 yrs after my death togr with any share wch may have accrued to such son or daur under this psnt clause shl upon the death of such son or daur so dying as afsd go to augmt the share or shares of the other child or chln of the sd X. born within the period afsd, & if more than one in eql portions, And if there shl be no child of my sd daur X. born within the period afsd, or if there shl be any such child or chln, but all such of them as are sons shl die minors within the period afsd & all such of them as are daurs shl die minors & unmarried within the same period, then my trees shl stand possed of the sd share & the investmts & income thof, IN TRUST, &c."

Settlement of daughter's share within limits as to perpetuity.

(*b*) The restriction in the text to 21 years appears to be necessary as to the to as well the capl of the same moiety as the income thof upon the like trusts & subjt to the like powers & provons for the benefit of the chln or child of my sd daur born in my lifetime or after my dece as are hinbfe decld & contd concerng the first-mentd moiety of the sd trust premes for the benefit of the chln or child of my sd son born in my lifetime or after my dece;

Gift in case son or daughter dies without issue.

PROVD ALWAYS & I declare that in case eir of them my sd son or daur shl die witht leavg any child who shl attn a vested intt under the trusts hinbfe decld, then the moiety of the sd respive trust premes hinbfe appted in favour of my sd son or daur (as the case may be) as to whom there shl be such default or failure of chln, & the income thof, or so much thof as shl not have been applied or disposed of under the trusts or powers vested in the sd respive trees or tree, shl from & after the dece of such son or daur as the case may be, or such default or failure of his or her chln, wchever shl last happen, be held upon the like trusts & subjt to the like powers & provons for the benefit of the other of them my sd son or daur & his or her chln or child born in my lifetime or after my decese as are hinbfe decld & contd concerng the origl moiety hinbfe appted for the benefit of such son or daur & his or her chln or child as afsd; *Specific beqts*, p. 608; *Genl legacies*, p. 708; *Genl devise & beqt of testor's own real & psonal este to trees*, p. 729; *Trusts for conversion*, p. 729; *Paymt of debts, &c.*, p. 734, [*marshallg clause*, p. 734] *& investmt*, p. 738; *Trusts as to one moiety for the son for life*, p. 740, *with remr to all his chln*, p. 747; *And as to the other moiety for the daur & all her chln by referce to trusts of son's share*, p. 762; *& givg the son & daur a power of apptmt among their respive chln;*

Hotchpot clause.

PROVD ALWAYS & I declare that no child of my sd son or daur as the case may be shl be entled to any share of the moiety of my residy este or the trust premes representg the same the trusts whof are hinbfe decled in favour of the chln of my son or daur resply witht bringg the share of capl, if any, to wch he or she may become entled of the trust premes hinbfe appted under the respive powers contd in my sd marre settlemt

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fund derived under the marriage settlement, and possibly also as to the other fund; see above, p. 866, note.

& in the sd will & codl of my sd father into hotchpot & acctg for the same accdly. *Other usual clauses relatg to testor's own ppty.* IN WITS, &c.

XXIII.

WILL *of a* MARRIED WOMAN UNDER *a general* POWER *in her Marriage Settlement in favour of her* HUSBAND. *A* SHORT *form* (*a*).

THIS IS THE LAST WILL of me, A., the wife of B., of, &c., IN EXERCISE of a power contd in an indre dated, &c.,

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As to wills of married women.

(*a*) The testamentary power of a married woman has been greatly enlarged by the M. W. P. A., 1882 (45 & 46 Vict. c. 75), ss. 1, 2, and 5; as amended by the M. W. P. A., 1893 (56 & 57 Vict. c. 63), s. 3. The power under the Act of 1882 extended to all property which by that Act (*Re Bowen*, [1892] 2 Ch. 291), or under the old law, constituted her separate estate; but the power did not go beyond this, so that a will made during the coverture was not, unless re-executed or confirmed after she became discovert, effectual to dispose of property acquired by her after the coverture: *Re Price*, 28 Ch. D. 709; and see *Re Young*, *ib.* 705. But by s. 3 of the Act of 1893, s. 24, of the Wills Act, 1837 (which provides that a will is to be construed with reference to the real and personal estate comprised in it, as if it had been executed immediately before the death of the testator, unless a contrary intention appears), is to apply to the will of a married woman (dying after the 4th December, 1893, *Wylie* v. *Moffat*, [1895] 2 Ch. 116) whether she is or is not possessed of any separate estate at the time of making it, and the will does not require to be re-executed or re-published after the death of the husband; this enactment, though it is not in terms expressed as enlarging the testamentary capacity of a married woman, appears to be effectual for the purpose, and to place her in substantially the same position as a man.

The will in this Precedent is made under the ultimate trust in a marriage settlement of the wife's property in default of issue of the marriage. The old form of these trusts was for the wife absolutely if she survived the husband, but if she predeceased him, it gave her a power of appointment by will; and prior to the M. W. P. Act, 1893, a will made during the coverture could only operate as an exercise of the power, and not as a disposition of her interest if she survived the husband, as to which she had no testamentary capacity during the coverture, and it was necessary that she should make a new will or re-execute her will in that event: *Noble* v. *Willock*, L. R. 8 Ch. 778, 7 H. L. 580, and cases there referred to. This, however, as above stated, is now unnecessary, though it would in general be desirable to make a new will.

As to power of married woman to appoint executors.

Although a married woman's testamentary power was, until the passing of the Act of 1893, restricted, the old practice of confining the grant of probate to such property as she had power to dispose of was discontinued after the passing of the Act of 1882, and the form of the grant became general as in the case of a man: see *Re Price*, 12 P. D. 137; *Re Lambert*, 39 Ch. D. 626; with the

PREC. XXIII.

being a settlemt exted on my marre with my sd husbd, & of every other power hrunto me enablg, I appt & direct that in case there shl be no child of my sd marre, who being a son shl attn the age of 21 yrs, or being a daur shl attn that age or marry, then the trees or tree for the time being of the sd indre of settlemt shl from & after my dece, or such default or failure of our issue, wch shl last happen, & subjt to the trusts & powers of the sd settlemt or by law vested in such trees or tree, & to every exercise of such powers, stand possed of the ppty representg the sum of £——, *or*, "the trust funds & premes" thby settled [& all ppty becomg subjt to the trusts of the sd settlemt by virtue of the provon thrin contd for the settlemt of my other & after-acquired ppty] IN TRUST for my sd husbd, absolutely; AND I DEVISE, beque, & appt all other ppty, whether real or psonal, belongg to me, or over wch I shl at the time of my death have any absolute power of apptmt or disposon by will, subjt to my debts & engagemts in the nature of debts, unto my sd husbd, his hrs, exs, ads, & assns absolutely (*a*); *Apptmt of B. exor*, p. 826. IN WITS, &c.

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anomalous result (prior to the Act of 1893) that her executors acquired a right of realisation and administration of all her personal estate, including property over which she had no dispositive power, and as to which her dispositions were a nullity: *Smart* v. *Tranter*, 40 Ch. D. 165, 43 Ch. D. 587; but this anomaly is now removed.

As to a married woman's power to appoint guardians of her children, see 49 & 50 Vict. c. 27, s. 3, *ante*, p. 827, note.

As to the husband's right to the wife's undisposed of separate personal estate, which is not affected by the M. W. P. Act, 1882, see p. 483, note.

(*a*) If the gift of the wife's own property is made to a stranger, it ought to be made contingent on her leaving no issue, unless she is past child-bearing.

XXIV.

TESTAMENTARY APPOINTMENT *by a* MARRIED WOMAN *under a* POWER *to appoint to her* ISSUE, *of the whole* INCOME *during her* HUSBAND'S LIFE *to her* INFANT SONS *and* UNMARRIED DAUGHTERS, *there being no* POWER *to appoint to* HUSBAND (*b*).

PREC. XXIV.

Appointment.

Commcemt, see last form; IN EXERCISE of the power for this ppose given to me by the will of X., of, &c., deced, dated, &c., & proved, &c., & of every, &c., I do hby appt that from & after my dece the trees or tree for the time being of the sd will shl durg the life of my husbd A. (shd he survive me) stand possed of all the annl income of the share of the residy este of the sd testor by the sd will settled in trust for me for my life, & after my dece in trust for my issue, & the investmts representg the same, in trust for such of my sons as shl for the time being be under the age of 21 yrs & such of my daurs as shl for the time being be spinsters (whether infants or adults), and if more than one in eql shares, & shl pay & apply such pt as the sd trees or tree shl in their uncontrolled discron think fit, of the share of such income belongg to any such son or daur who shl for the time being be an infant for or towards his or her mtce, educon, or benefit, eir directly or by payg the same for that ppose to my sd husbd if livg, or if not to the gdian or gdians of such son or daur witht being liable or concerned to see to the applicon thof, & witht regard to the ability of my sd husbd if livg to maintain his infant chln or to the existce of any other fund applicable for that ppose, & shl [*accumulate residue* (*c*)], & subjt as afsd shl from & after my dece hold the sd share of the sd residy este & premes IN TRUST, &c., *for all chln at* 21, *&c.* IN WITS, &c.

Maintenance clause.

(*b*) This appointment, although having for its object indirectly to secure the income to the husband as far as possible, seems legitimate, and not open to objection under the doctrine as to frauds on powers.

(*c*) As to power of accumulating, see above, p. 599, note.

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XXV.

WILL *of a* MARRIED WOMAN (*a*) *under a* GENERAL POWER *in her Marriage* SETTLEMENT, *and disposing of all her* SEPARATE ESTATE *and property so as to* OPERATE *whether she* SURVIVES *or* PREDECEASES *her* HUSBAND. *Bequest of* LEGACIES *and* ANNUITY. SPECIAL GIFT *of annuity* FUND *after death of annuitant. Gift of* LEGACIES *in trust for* SISTERS *and their* ISSUE. LEGACY *in trust for* CHILDREN *of another* SISTER *who does not take a life interest. Direction to pay* INCOME *of* MINORS *to their* MOTHER *for their maintenance. Gift of* RESIDUE *to* BROTHERS.

Commencement. Recital of marriage settlement.

I, A., the wife of B., of, &c., declare this to be my last will: WHAS by a settlemt made on my marre with my sd husbd, dated, &c., & made betn myself by my then name of —— of the first pt, my sd husbd of the second pt, & C. & D. of the third pt, the sevl stks, funds, and ppty thrin mentd, & certn intts which were then in revon or contingency or unascertained, but wch have since fallen into posson or been ascertained and recd by the trees of the sd settlemt were settled upon trusts for the benefit of myself & my sd husbd, durg our respive lives, and aftwds for the issue of our marre, and in the event of such default or failure of issue of our marre as thrin mentd, then if I shd survive my sd husbd in trust for myself absolutely, but if I should die in the lifetime of my sd husbd then subjt to his life intt upon such trusts & genlly in such mner in all respts as I shd, notwg my coverture, by will appt, & the sd indre contains a provon for the settlemt of my other or future ppty accruing durg my said coverture (except as thrin mentd) upon the like trusts; NOW IN EXERCISE of every power given to me by the said settlemt or orwise & to the intent that this my will shl take effect whether I survive or predece my sd husbd, I hby appt & direct that in case of such default or failure of issue of my marre as in the sd settlemt is mentd, all the trust funds & ppty wch are now or may hrafter become

Appointment.

(*a*) See p. 871, note.

subjt to the trusts of the sd settlemt, or so much thof as shl not have become vested or been applied under the trusts or powers by the sd settlemt or by law vested in the trees or tree thof, shl upon the death of the survor of myself & my sd husbd, or such default or failure of issue as afsd (wch shl last happen) be transferred by the trees or tree for the time being of the sd settlmt to the trees or tree for the time being of this my will (*b*) (hinafter called my trees), whose rect shl be an effectual discharge for the same, AND shl be held by my trees upon the trusts follg (that is to say), UPON TRUST to pay throut my funl & testy expses and debts, & engagemnts in the nature of debts (unless the same shl be orwise pd as hinafter provided & as the secondary fund for the paymt thof), & in the next place to pay or provide for throut the follg legacies & annies free of duty, *General Legacies*, p. 708, *& an anny to commce from the death of the survor of the testrix & her husbd*, p. 720; AND I DIRECT my trees to set apt & invest in any such investmts as are hinafter authorised a sufft capl sum to answer by the annl income thof the sd anny hinbfe bequed, and upon the death of the said annuitant I BEQUE the fund so set apt to such of my brothers & sisters (other than my sister C.) as shl be livg at the death of the survor of myself & my husbd & the sd annuitant, or shall be then dead leavg issue then livg if more than one in eql shares, to the intent that the shares so expd to be given to such of my brothers as shl be dead leavg issue shl vest in their respive personal repves as pt of their psonal este (*d*), & that the shares so expd to be given to my sd respive sisters (whether survivg me or not) shl be retained by my trees, and held upon the trusts hinafter decld concerng the legacies of £—— each next hinafter bequed in trust for them resply; I DIRECT that my trees shall set apt the sum of £—— or investmts which they shall consider of equivalent value for each of my sd sisters (other than my sister C.) to be held

Upon trust to pay debts (*c*),

and legacies, and an annuity.

Sum to be set apart to answer annuity.

Bequest after death of annuitant.

Legacies for benefit of sisters.

(*b*) The trusts of the will in this case (as the power in general) may and are directed to be executed by the trustees appointed by the testatrix; as to the case of a special power, see Vol. I., p. 70, note.

(*c*) The appointed fund would be assets for payment of debts without any express provision; see the M. W. P. A., 1882, s. 4. As to the rights of the husband to retain the funeral expenses of his wife as against creditors in the absence of a charge of debts, see *Re McMyn*, 33 Ch. D. 575.

(*d*) See p. 750, note (*c*).

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Trusts of legacies. Sister for life, and for her issue. Gift over on death of sister without issue.

upon the follg trusts, that is to say, Upon trust to vary the investmt thof at any time in any mner hinafter authorised at discron, & to pay the income of each of such sums & the investmts thof to the sister of mine for whom the same shl be intd durg her life & so that durg coverture the same shl be for her septe use witht power of anticipon, & after her dece shl hold the capl thof, In trust, *&c., for issue of sister, as she may appt*, p. 745, *in default for her chln at* 21, *&c.*, p. 746; *Hotchpot clause*, p. 755; *Advcemt clause*, p. 776; And in case any of my sd sisters shl have no child who shl attn a vested intt under the trusts hinbfe contd, then subjt to the trusts afsd the legacy hinbfe bequed in trust for her & the trust funds representg the same shl sink into the residue of the sd trust premes;

Gift of another legacy to the children of another living sister. Direction to pay income of shares of minors to mother for maintenance.

And I direct that my trees shl set apt the sum of £—— or investmts wch they shl consider of equivalent value, with power to transpose such investmts in mner afsd, & shl hold the same In trust for the chln or child of my sd sister C. who shl, *&c.*, p. 747, *form* viii.; And I direct that the income of the expectant shares of such respive chln shl durg their respive minorities in the case of sons, & minority & spinsterhood in the case of daurs, be pd to their mother the sd C., if living, for their mtce & educon, but witht any liability to acct for the applicon thof, & in case of her death the same income or any pt thof shl be applied at the discron of my trees for that ppose, eir directly or by paymt thof to the gdian or gdians of such respive chln witht liability to see to the applicon thof, and any surplus income shl be invested in mner afsd & accumulated as an addon to the capl of the trust fund; *Advcemt clause*, p. 776;

Gift over in case no child shall attain a vested interest.

And in case there shl be no child of my sister C. who shl attn a vested intt under the trusts afsd, the sd last-mentd legacy and the trust premes representg the same or so much thof as shl not have been applied or disposed of under the trusts afsd shl sink into the residue of the sd trust premes;

Residuary appointment, devise, and bequest.

And I appt, devise & beque all the residue of the sd trust premes comprd in or subjt to the trusts of my sd marre settlemt (includg in such residue any of the legacies hinbfe bequed wch may wholly or partially fail by lapse or orwise), & all & singr other the este & effects both real & psonal of or to wch I shl at my dece be seised, possed, or entled as my septe este, or wch I may have power to dispose of by this my will (whether I survive my sd husbd or not) subjt to & as the primary fund for the paymt of my debts & engagements in the nature of debts unto & eqlly betn such of my brothers as shl be livg at my dece or shl have previously died leavg issue then livg, if more than one in eql shares, & so that the shares so expd to be given to any such deced brother shl vest in his hrs, devisees, exs, or ads, as pt of his real or psonal este as the case may be, *Investmt clause*, p. 739; *Power to trees to settle questions*, p. 824; *Power to employ agents, &c.*, p. 824: AND I APPT —— exs & trees of this my will. IN WITS, &c.

Equally to brothers.

XXVI.

WILL *of a* MARRIED MAN *providing for the event of his* DYING SIMULTANEOUSLY *with his* WIFE (*a*).

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Commcemt, p. 682. I appt my wife B. sole extrix & tree of this my will, but in case she shl predece me, or in case she shl survive me but shl die bfe provg this my will, or shl not prove the same within three calr months after my death, then I appt C. sole exor & tree thof, *gift of legacies, genl devise & beqt*, UNTO & TO THE USE of my sd tree, her or his hrs, exs, & ads; UPON TRUST, &c., *for conversion, paymt of funl, &c., expses, debts & legacies, & investmt*, & shl stand

Appointment of executors.

(*a*) This will is intended to provide for the contingency of the testator dying simultaneously (or nearly so) with his wife, and especially so as to prevent his testamentary wishes being frustrated in the event of this happening under circumstances (such as a shipwreck) which would leave no means of ascertaining which died first. If this were to happen, and the will were in the form of a gift to the wife if surviving and in the converse event to other parties, it would fail altogether, and his intentions would be defeated (see *Re Alston*, [1892] P. 142). To obviate this, an absolute overriding power of appointment by deed or will is given to the wife which is equivalent to an absolute bequest to her, except that to make the property her own she must execute a deed. In the event of her not surviving, or not exercising the power, the alternative dispositions will take effect, so that, in the event of such a catastrophe as is supposed, the will would operate whichever may have survived. A similar will would usually be made by the wife, to the extent of her testamentary capacity under the M. W. P. Acts (as to which see p. 871, note) or otherwise.

As to mode of providing for testator and wife dying simultaneously.

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Trust of residue as wife may appoint.

possed of the sd trust premes constitutg or representg my residy este; IN TRUST for such pson or psons for such pposes & in such mner in all respts as my sd wife, if survivg me, shl at any time or times by any deed or deeds, or by will or codl appt, it being my express wish & intention that my sd wife in case she survives me may, if she thinks fit, make my sd este & ppty, or any pt thof, her own by an exercise of the power of apptmt hinbfe conferred on her, or may abrogate or modify to any extent & in any mner she may think fit the disposons hinafter made by me thof in the event of her not exercisg such power:

In default for her for life, &c.

AND IN DEFAULT of & subjt to any apptmt by my sd wife under the power afsd: UPON TRUST & to the intent that my sd wife if survivg me shl have the enjoymt & rece the income & annl produce of the sd trust premes durg her life for her own absolute benefit, AND AFTER her death, UPON TRUST, &c., *ulterior trusts & usual clauses.* IN WITS, &c.

XXVII.

PREC. XXVII.

WILL *settling* RESIDUARY *estate, with trust for conversion, on testator's* CHILDREN, GRANDCHILDREN *and* GREAT-GRANDCHILDREN *as far as the law of* PEPETUITY *will permit* (*a*).

Commcemt; Apptmt of exs & trees; Specific & pecuniary legacies, &c.; Residy devise & beqt in trust for conversion and paymt of debts, &c., & investmt; Declon of trust of residy moys;

Trust for division among children.

IN TRUST to divide the same residy moys & investmts into —— eql shares, & to appropriate one of such shares to each of my chln now livg, whether such child shl survive me or not, & one share to my deced daur ——, & so

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Law of perpetuities.

(*a*) This Precedent, the trusts of which are somewhat elaborate, though compendious, is adapted to the case of a testator advanced in years with a grown-up family of children and grandchildren, who is desirous of tying up his property for as many generations as possible, and will serve to indicate the limits allowed by the law of perpetuities; it will be seen that the trusts are carefully restricted, so that the vesting can in no case be postponed beyond lives in being and 21 years.

Declaration of trust of shares.

Son or daughter for life.

Remainder for his or her children.

Declaration of trust of shares of grandchildren born in testator's lifetime.

As to share of grandson so born

that any referce hinafter contd to the shares of my respive chln in my residy este shl be deemed to apply & have referce to the shares hinbfe directed to be appropriated to them resply, whether they shl resply survive me or not; PROVD ALWAYS & I direct that the shares so directed to be appropriated to my sd respive chln shl not vest absolutely in them or their repves, but shl be retained by my trees & held upon the trusts hinafter decld concerng the same resply; I DIRECT that my trees shl hold the share of each of my sons in my sd residy este, UPON TRUST, &c., [*protected life intt, see* pp. 741, 742, *forms* IV. & VI.]; AND I DIRECT that the sd trees shl stand possed of the share of each daur of mine in my sd residy este [*daur for life, septe use, &c., see* p. 741]; AND I DIRECT that my sd trees shl stand possed of the share of each of my sd sons & daurs in my sd residy este from & after his or her dece, or from & after my dece as to any son or daur predeceasg me; UPON TRUST to appropriate such share unto such chln or child of the son or daur of mine to whom such share shl have been origly appropriated as afsd as shl be livg at my death or born aftwds, or shl have died in my lifetime leavg issue survivg me in eql shares; PROVD ALWAYS & I empower each of my sd sons & daurs who may survive me, at any time by deed revocable or irrevocable, or by will or codl to alter in any mner & to any extent he or she may think fit, the shares in wch the afsd share of such son or daur in my residy este shl after his or her death be appropriated to his or her chln if more than one as lastly hinbfe provd, but it shl not be competent to such son or daur to alter in any respt the trusts upon wch the shares or share so appropriated to his or her chln or child, are or is to be held as hinafter provd; AND I DECLARE that any referce hinafter contd to the share of any grandchild of mine shl be deemed to apply & have referce to the share appropriated to such grandchild as afsd, whether he or she shl survive me or not: PROVD ALWAYS & I direct that the share of any grandchild of mine who shl have been born in my lifetime shl not (except in the event hinafter provd in that behalf) vest absolutely in such grandchild or his or her repves, but whether he shl survive me or die in my lifetime leavg issue as afsd shl be retained by my trees & held by them upon the trusts hinafter decld concerng the same, that is to say, upon trust to pay the income thof to such grandson if

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for him for life remainder to issue.

In default as he appoints by will.

In default to accrue.

As to share of granddaughter so born.

Upon trust for her and her issue and appointees.

In default to accrue.

Trusts of shares of after-born grandchild.

For grandchild and his issue with restriction as to perpetuities.

survivg me durg his life, & after his death [*usual trusts for issue*] & in case the trusts hinbfe decld concerng the share of such grandson shl fail, then subjt & witht prejudice to the trusts hinbfe decld concerng such share, the same share shl be held IN TRUST for such pson or psons & for such pposes as my same grandson shl by will or codl appt, & in default of & subjt to any such apptmt the same shl be held upon the trusts & in the mner upon & in wch the same wd have gone & been held if such grandson of mine had never existed; AND I DECLARE that the share of my residy este hinbfe directed to be appropriated to any granddaur of mine who shl have been born in my lifetime (whether she shl survive me or die in my lifetime leavg issue survivg me as afsd), shl be held by my trees upon the like trusts so far as capable of takg effect, for such granddaur durg her life (but with the substiton of a life intt for her septe use witht power of anticipon for a simple life intt), & after her dece for her issue, & with the like power to her of apptmt among her issue, & the like power to her of testy apptmt on failure of the prior trusts as are hinbfe decld concerng the share of each grandson of mine who shl have been born in my lifetime, & in case of the failure of the trusts hinbfe decld concerng the share of any granddaur of mine born in my lifetime & subjt thto so far as capable of takg effect, the share of such granddaur of mine shl go & be held upon the like trusts & in the like mner as if such granddaur had never existed; AND I DIRECT that the share hinbfe directed to be appropriated to any grandchild of mine who shl be born after my dece shl not (except in the event & to the extent hinafter provd in that behalf) vest absolutely in such grandchild but shl be retained by my trees, & held by them upon the trusts hinafter decld concerng the same resply, that is to say, the share of any grandson of mine who shl be born after my dece shl be held IN TRUST to pay the income thof unto such grandson until his death, or until the death of the last survor of such of my chln & grandchln as shl be born in my lifetime (wchever of such events shl first happen), & in case such grandson shl be livg at the death of the last survor of such chln & grandchln of mine as last afsd, then upon trust to pay & transfer the capl of such share to my same grandson for his absolute benefit, but in case such grandson shl predece such last survor, then from & after the death of my same grandson

In default to accrue.

As to shares of after-born grand-daughters on like trusts as settled half of shares of after-born grandsons.

Maintenance and accumulation.

Ultimate trust for accruer.

the capl of such share shl be held upon the like trusts for the benefit of the issue of such grandson, & with the like power to him of apptmt among such issue, & the like power to him of testy apptmt on failure of the prior trusts as are hinbfe decld & contd concerng the share of any grandson of mine who shl be born in my lifetime (*a*); AND in case of the failure of the trusts hinbfe decld concerng the share of any grandson of mine born after my dece, such share shl go & be held upon the like trusts & in the like mner as if such grandson had never existed; AND I DECLARE that the share of any granddaur of mine who shl be born after my death shl be held upon the like trusts for the benefit of such granddaur & her issue & apptees as are hinbfe decld concerng the share of any grandson of mine born after my death, but so that any intt in the income of such share to wch such granddaur may be entled shl durg coverture be for her septe use, witht power of anticipon, & in case of the failure of such trusts & subjt to the same so far as takg effect, the same share shl go & be held upon the like trusts & in the like mner as if such granddaur had never existed; PROVD ALWAYS, & I declare that durg the minority of any grandson or great-grandson, or the minority & discoverture of any granddaur or great-granddaur of mine, whether born bfe or after my death, the income of any share to wch such minor may be entled for life or for any less period, or to the capl whof such minor may be entled in expectancy, may be applied by my trees wholly or partially for the mtce, educon, or benefit of the minor so entled in such mner as my trees may think fit, & eir directly or by paying the same for that ppose to the gdian or gdians of such minor witht seeing to the applicon thof, & any surplus of such income shl be accumulated by my trees by the investmt thof & the accrug income thof, so as for all pposes to be added to & become pt of the capl of such share [*advcemt clause*]; AND I DIRECT that in case the trusts hinbfe decld concerng the share of any of my sd chln in the sd trust premes shl fail, then & in such case & subjt & witht prejudice to the trusts hinbfe decld concerng such share, so far as the same

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(*a*) A gift of land to the children of a grandchild not born in the testator's lifetime would be void as offending against the rule of double possibilities: *Whitby* v. *Mitchell*, 44 Ch. D. 85.

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shl take effect, the same share, includg any further share wch may accrue or be added thto under this psnt provon, shl accrue & be added to the origl shares in my sd residy este hinbfe directed to be appropriated to my other chln afsd (whether survivg me or not) in eql proportions, & the share or shares wch shl so accrue to my sd respive chln shl be held upon the like trusts as are hinbfe decld concerng their respive origl shares. so far as capable of takg effect; *Usual clauses.* IN WITS, &c.

XXVIII.

PREC. XXVIII.

WILL *devising* FREEHOLDS, COPYHOLDS, LEASEHOLDS, *and* HEIRLOOMS *to the Testator's Issue in* STRICT SETTLEMENT, *and* BEQUEATHING *the* RESIDUARY PERSONALTY *on the trusts declared of the* PROCEEDS *of a* SALE *of the real estate.* A FULL *form.*

Devise of freeholds.

Commcemt, p. 682: *Specific devises,* p. 690: I DEVISE all my freehd [manors, lordships, reputed manors or lordships, messes, farms, lands, tithes, rents, advowsons, tenemts &] hds, situate, arisg, & being in the sevl parishes, or places of, &c., or elsewhere, in the sevl counties of, &c., with their & every of their rts, royalties, members, & appurts, & all other estes & hds of freehd tenure, not orwise disposed of by this my will, or any codl hto, of or to wch I may at my dece be seised or entled, or over wch I may have any absolute power of disposon exerciseable by will [*or, for brevity,* all my freehd estes & hds whatsr & wheresr, not orwise disposed of], [Unto B., of, &c., & C., of, &c., & their hrs, to the uses, upon the trusts, & subjt to the powers & provons hinafter decld & contd concerng the same, that is to say], TO THE USE, &c., *Limon to trees for term of* 1000 *yrs,* p. 793; *Limon of rent-chge to wife,* "in bar of dower & freebench," p. 794; *form* X. (*a*); *Limon of term of* 500 *yrs to trees,* p. 793; *Limons in strict settlemt to testor's sons & their issue male,* p. 796, *form* XIX.; [*Limons to testor's*

(*a*) As to the omission of the powers of distress and entry and term for securing the jointure, see Vol. I., p. 314, note.

daurs & their issue male, p. 797, *form* XX.]; *Limons in remr to the issue genl of testor's sons,* p. 797, *form* XXI.; *Limons in remr to daurs & their issue,* p. 799, *form* XXII.; [*If the limon to the daurs & their issue male, form* XX., *is inserted, as above, substitute for the last limon, form* XXIII., p. 799]: *Ulterior limons (if any) wch can readily be framed from the forms at* pp. 792 *to* 801; *Ultimate remr* "TO THE USE of my own rt hrs (*b*);" *Provo cuttg down estes tail of psons born in testor's life,* p. 794; [PROVD ALWAYS & I declare, &c., *Name & arms clause,* p. 589, *mutatis mutandis* (*c*)]; *Trusts of term of* 1000 *yrs to pay debts & legacies,* "in case of deficiency of," *psonal este,* p. 804; AND I DECLARE, &c., *Trusts of term of* 500 *yrs for raisg portions for testor's yor chln,* p. 802; *Power to male tenants for life to jture,* p. 805, *& for female tenants for life to limit rent-chges to husbds,* p. 805; *Power to chge portions,* p. 805; PROVD ALWAYS & I declare, &c., *Provo that a chge of a rent-chge or portions shl not take effect unless the pson chging the same or his or her issue becomes entled in posson,* p. 606, *mutatis mutandis;* PROVD ALSO & I declare that, &c., *Provo limitg total amt chgeable for rent-chges & portions,* p. 607, *mutatis mutandis;* [*Shiftg clause carryg over este on succon to anor este,* p. 591, *mutatis mutandis*]; *Power to manage durg minorities,* p. 805, *or, the Addon to statutory clause,* p. 805 (*d*); *Provon requirg tenants for life to keep land in cultivon,* p. 647; *Power to lend capl moy to tenants for life for stockg farms,* p. 647; *Provon as to notices under S. L. Acts,* p. 817: [*Add any of the follg clauses wch may be appropriate & required with reference to the S. L. Acts; Provon as to extension of powers of Acts,* p. 807; *Provon for there being no pson havg powers of Acts,* p. 808; *Power to grt leases for long terms & revy leases, &c.,* p. 641, *mutatis mutandis; Provon as to fines on renewals,* p. 641, *mutatis mutandis; as to ming rents,* p. 642, *mutatis mutandis; as to sale, &c., of mansion-house, &c.,* p. 642; *Power*

(*b*) See p. 589, note.

(*c*) If the name and arms clause is inserted, the variations given in the notes to the forms for that case will be introduced.

(*d*) The express powers of leasing, sale, &c., are dispensed with in reliance on the S. L. Acts, see p. 572, note; for the forms of such powers if it is desired to insert them, see pp. 805, 806, and the references in the notes thereto.

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to make grts in fee for bldg ppose & other bldg este powers, p. 642 *et seq., mutatis mutandis; Extended power to raise moy on mtge,* p. 642, *see also* p. 735, *mutatis mutandis; Power to sell for fee-farm rents,* p. 643; *Power to exchange for land in Ireland,* p. 643; *Power to sell or grt sites for churches, schools, &c.,* p. 643; *Power to accept leases of easemts,* p. 644; *Extension of powers of investmt under Acts,* p. 644; *Extension of provons of Acts as to improvemts,* p. 645; *Power to tenant for life to chge inhance with improvemts,* p. 647; *Provon as to title of S. L. Acts,* p. 817]; *Devise of copyhds, & beqt of leasehds, on trusts correspondg with uses of freehds,* pp. 810, 811; *but consider the note there as to leasehds* [*Power to sell leasehds by way of underlease,* p. 652;] [*For a ming este, beqt of ming plant, &c., on trusts,* p. 652, *mutatis mutandis;*] I BEQUE my service of plate, marked with the —— crest, *or,* "my collection of oil paintgs," *or,* "all the plate, furniture, linen, china, glass, & articles of househd use or ornamt, prints, pictures, busts, statues, bronzes, marbles, vases, antiquities, books, and manuscripts, wch shl be in, about, or belongg to my mansion-house of ——, [*or,* ppal place of residce] [or the gardens or pleasure grounds thof], at the time of my dece (except such articles as from their triflg value, or unimportant or perishable nature, my trees shl consider to be unsuitable for heirlooms) (*a*)," *or as the case may be,* UNTO THE sd, *trees,* upon trust, &c., *continue trust of chattels as heirlooms by referce to the limons of the devised estes,* p. 653, *mutatis mutandis; Power to trees to give heirlooms to tenant for life,* p. 811, *note; Other specific beqts,* pp. 682 *et seq.; Immediate legacy to wife,* p. 708; *Genl legacies,* pp. 708 *et seq.; Beqts of annies,* pp. 720 *et seq.; Genl beqt of psonal este in trust for conversion & paymt of debts, &c.,* pp. 728, 729, 734, "& shl stand possed of the residue of such moys upon the trusts & subjt to the powers & provons wch wd be applicable to such moys if the same had arisen from a sale of the freehd hds hby devised in strict settlemt & so that the same shl be deemed to be impressed with a trust for the investmt thof in the pchase of freehd hds, & for the interim investmt thof in any other mner in wch such sale moys may be liable to be invested & shl devolve

Copyholds and leaseholds.

Heirlooms.

Bequest of residuary personal estate.

(*a*) Care should be taken not to include in a gift of heirlooms articles of an unimportant nature.

as real este accdly (*b*): *Power to postpone conversion of psonalty & trusts of income until conversion*, p. 736; *Power to trees to settle questions*, p. 824; *Clause apptg trees under S. L. Acts, & as to a sole tree*, p. 818; *Clause apptg trees of compound settlemts*, p 649, note (*d*), *form* A.; *Clause supplemtal to statutory provons as to indemnity of trees*, p. 823 (*c*); [*Declaron as to devolon of trees' powers*, p. 825]; *Apptmt of exs & trees*, p. 826; *Devise of trust, &c., estes of copyhd*, p. 825; *Power to employ agents, &c.*, p. 824; *Apptmt of gdians*, p. 827. In wits, &c.

XXIX.

WILL *giving* FREEHOLDS, COPYHOLDS, LEASEHOLDS, *and* HEIRLOOMS *to Testator's issue in* STRICT SETTLEMENT *in the* MALE *line.* *A* SHORT *and Compendious form.*

Commcemt, p. 682. I DEVISE all my freehd hds unto & to the use of, *trees*, for the term of 1,000 yrs, to commce from my death, WITH REMR to the use of my sons sevlly & successively accdg to seniority for life, WITH AN immediate remr after the death of each of my sons TO THE USE of his sons sevlly & successively accdg to seniority in tail male WITH AN ULTIMATE REMR to the use of my own rt hrs; AND I DECLARE that the este of every tenant for life hrunder shl be witht impeachmt of waste: PROVD ALWAYS that if any grandson of mine hby made tenant in tail male by pchase shl be born in my lifetime his este in tail male shl not take effect, & in lieu thof I devise the sd hds to the use of such grandson for his life, with remr to his sons sevlly & successively accdg to seniority in tail male; I DECLARE that the sd, *trees*, & the [survors &] survor of them, or other the trees or tree for the time being of this my will, hinafter called my trees, shl stand possed of the sd term of 1,000 yrs upon trust by & out of the rents & profits of the sd premes, or by the sale of timber or minls, or by mtge of the sd premes or any pt thof for all or any pt of the sd term, to raise the annl & gross sums follg [free from death duties], & to pay & apply"

Limitation of term to trustees.

Testator's sons for life.

Grandsons in tail male.

Proviso cutting down estates of tenants in tail born in testator's lifetime.

Trusts of term.

(*b*) See p. 570, note.

(*c*) As to the appointment of new trustees, see p. 657, note.

PREC. XXIX.

To raise money, pay debts, &c.

Jointure for wife.

Portions for testator's younger children.

Jointures for widows of tenants for life.

Portions for younger children of tenants for life.

Maintenance of younger

the same in mner hinafter mentd, that is to say, FIRST, in case of deficiency of my psonal este such sum as may be sufft for dischargg my funl & testy expses, debts & legacies, but so that no mtgee or pchaser shl be bound to enquire whether such deficiency exists, & that the declon in writg of my trees that no further sum can be required to be raised under this psnt trust shl be conclusive in favour of the revoners; SECONDLY, an anny of £—— commencg from my death, to be pd to my wife K. if survivg durg her life on the usual qtr days, & so that durg any future coverture the same shl be for her septe use witht power of anticipon; THIRDLY, the sum of £—— for each child of mine who being a son attns the age of 21 yrs or being a daur attns that age or marries, except any son or sons who bfe attaing the age of 21 yrs shl become entled to the first este of freehd under this my will; FOURTHLY, such annl sum not exceedg the sum of £—— as any pson hby made tenant for life who or whose issue shl become entled to the first este of freehd in posson under this my will shl by deed revocable or irrevocable or by will appt to be pd to his widow for her life or any less period, on such days & in such mner as he shl appt; FIFTHLY, such sum not exceedg the sum of £——, as any pson hby made tenant for life who or whose issue shl become entled to the first este of freehd in posson under this my will shl by deed revocable or irrevocable or by will appt to be raised after his death or in his lifetime with his consent in writg, & to be held in trust for all or any to the exclusion of the others or other of his chln or remoter issue other than any son or sons who bfe attaing the age of 21 yrs shl become entled whether in posson or remr to the first este in tail male under this my will, if more than one in such shares & in such mner in all respts as the pson makg such apptmt as last afsd shl by the same or any other deed revocable or irrevocable or by will or codl appt, & in default of & subjt to any such apptmt in trust for all or any his chln or child other than as afsd who being a son or sons attn the age of 21 yrs, or being a daur or daurs attn that age or marry, if more than one, in eql shares, & subjt to the trusts afsd the sd sum of £——, or such smaller sum as shl be appted or so much thof as shl not become vested under the sd trusts shl sink into the este & not be raised; SIXTHLY, such annl sum for the mtce, educon, or benefit of each child, grandchild, or great-grandchild of mine, who, if of full age, wd be immedly entled to a portion, as my trees shl think fit, such annl sum not to exceed intt at the rate of 4 p.c. p.a. on such portion, & to be so applied by my trees or to be pd by them to the gdians or gdian of such child, grandchild, or great-grandchild, for such ppose witht seeing to the applicon thof; SEVENTHLY, such sum not exceedg a moiety of the expectant or presumptive portion of any child of mine as my trees shl think fit, to be applied for the advancemt or benefit of such child in such mner as my trees shl think fit, & to be treated as pt of the portion of such child, in case he or she shl become entled thto; AND EIGHTHLY, such sum not exceedg a moiety of the expectant presumptive or vested portion to wch any grandchild or great-grandchild of mine wd, if of full age, & if his or her father or grandfather to whom a life este is hinbfe given were dead, be immedly entled, as such father or grandfather shl durg his lifetime in writg direct or as my trees shl after his death think fit, to be raised after the death of such father or grandfather or in his lifetime if he shl so direct in writg, & to be applied for the advancemt or benefit of such grandchild or great-grandchild of mine in such mner as his or her father or grandfather shl durg his lifetime or my trees shl after his death think fit, but so that if any such advce shl be made an eql pt of the sd sum of £—— or of such smaller sum as shl be chged for the portions of the child, chln, or remoter issue of such father or grandfather shl sink into the este & shl not be raised; AND I DECLARE, &c., *continue provo as to surplus rents of term*, p. 597, *clause in brackets at end of form* XXX., *mutatis mutandis; Provos that anny or portions shl not take effect in certain events & limitg total amt chgeable for anns & portions*, p. 606, *mutatis mutandis, & substitutg* "anns," *for* "rent-chges"; *Minority clause supplemental to statute*, p. 805, *Provons as to cultivatg & stockg farms*, *&c.*, p. 647, *forms* CI. *&* CII.; *Provon as to notices under S. L. Acts*, p. 817, *mutatis mutandis;* [*Add any of the other clauses havg referce to the Acts wch may be required, as in last Prec.*]; I DEVISE & BEQUE all my copyhd & customary hds, & all my leasehd hds, whether held for lives or for terms of yrs, unto & to the use of the sd

children of testator and tenants for life.

Advancement of younger children of testator.

Advancement of younger children of tenant for life.

Gift of copyholds and leaseholds.

PREC. XXIX.

A. & B., their hrs, exs, ads, & assns, resply [(*a*) UPON TRUST out of the rents & profits thof, or by raisg moy on mtge thof, to pay the rents & fines & pform the covts subjt to wch the same may resply be holden, & to renew at the usual periods the leases or grts of such of the sd hds as may be held under leases or grts for lives, or for yrs usually renewable, & subjt as afsd] UPON SUCH TRUSTS & subjt to such powers & provons as will most nearly correspond with the uses, trusts, powers, & provons hrin decld & contd concerng my freehd hds, but not so as to increase or multiply chges & powers of chgg; I BEQUE unto the sd, *trees, Heirlooms, see last Prec.,* UPON TRUST to allow the same to devolve as heirlooms, togr with the sd mansion-house at ——, as far as the law will permit; BUT I DIRECT that such of the leasehd hds hinbfe bequed as are held for yrs & the sd heirlooms shl not vest absolutely in any pson hby made tenant in tail male by pchase who shl die under the age of 21 yrs, but shl on his death under that age devolve as if the same had been freehds of inhance hby devised in strict settlemt; *Other specific legacies,* pp. 683 *et seq.; Genl legacies,* pp. 708 *et seq.; Gift of residy psonalty to trees,* p. 728, *form* V.; *Upon trust for conversion,* p. 729; *Paymt of debts, &c.,* p. 734; AND shl apply the residue of the same moys as if the same had arisen from a sale of the freehd hds hinbfe devised in strict settlemt, & so that, &c., *as at* p. 884; *Power to postpone conversion of psonalty & trust of income until conversion,* p. 736; *Clause apptg trees under S. L. Acts & as to a sole tree,* p. 818; *Apptmt of trees of compound settlemt,* p. 649, note (*d*), *form* A.; *Apptmt of exs,* p. 826; *Devise of trust, &c., estes of copyhd,* p. 825; *Power to employ agents, &c.,* p. 824; *Apptmt of gdians,* p. 827. IN WITS, &c.

Heirlooms.

Heirlooms and leaseholds not to vest in tenant in tail by purchase under 21.

(*a*) The part in brackets may usually be omitted.

XXX.

PREC. XXX.

WILL *devising* REAL ESTATE *in* STRICT SETTLEMENT *for securing* RENT CHARGE *to testator's* WIFE, *in augmentation of her jointure, and subject thereto as to* PART *of estates to a* SON, *and his* WIFE *and* ISSUE, *and as to the* REMAINDER *to a* DAUGHTER, *and her* HUSBAND *and* ISSUE, *with* CROSS LIMITATIONS, *on failure of the primary limitations.* ULTERIOR LIMITATIONS OF PART *of estates by* REFERENCE *to the limitations of the other part.* LIMITATION *of a* TERM *in* PART *of the estates in trust to* RAISE MONEY *to* PAY MORTGAGE *and other* DEBTS *in aid of personalty, and a* SUM *to be at the Testator's* WIFE'S DISPOSAL *by* WILL. DEVISE *of land to* GO WITH ESTATES *devised by a* FORMER TESTATOR.

Devise of lands to go with settled estates.

Commcemt, p. 862; I DEVISE all the messes, farms, lands, & hds, situate, &c., wch I pchased of ——, & wch were conveyed to me by an indre dated, &c., & made, &c., with the appurts thof, to such & the same pson or psons, for such & the same este & estes, & subjt to such & the same powers & provons, as the hds known as the —— este, situate, &c., were devised by the will dated, &c., & proved, &c., of —— deced, to the intent that the sd hds so pchased by me as afsd, may from & after my dece devolve, & be held & enjoyed with the sd —— este, but not so as to increase or multiply chges or powers of chargg (*b*); *Genl devise of all other freehd estes, as in Prec.* XXVIII., UNTO B., of, &c., & C., of, &c., & their hrs, TO THE SEVL USES, upon the sevl trusts, & subjt to the sevl powers & provons hinafter decld & contd concerng the same resply (that is to say) AS TO & concerng my lands, messes, & hds situate in the parishes of —— or elsewhere in the coy of Kent, *to B. & C., for a term of* 500 *yrs, on trusts after decld,* p. 793, *form* IV., AND AS TO & concerng my sd lands, messes, & hds, situate in the coy of Kent, from & after the determinon of the sd term of 500 yrs, & in the meantime subjt thto, & to the trusts thof,

General devise of freeholds.

As to freeholds in Kent to trustees for 500 years.

(*b*) Compare form XXI., p. 696.

PREC. XXX.

Limitation of jointure to testator's widow (*a*).

Limitations of Sussex estates.

Limitations of Kent estates.

Trusts of term.

AND AS TO & concerng all the residue of my sd freehd estes & hds hinbfe devised to the sd B. & C. from & after my dece, TO THE USE, &c., *Limon of rent-chge to testor's wife durg widowhood,* "in augmenton of the jture provd for her by the settlemt made on our marre," p. 794, *form* X.; AND AS TO & concerng my estes & hds situate in the coy of Sussex, subjt to & chged with the sd rent-chge, & the powers & remedies subsistg for securg the same, TO THE USE, &c., *testor's son D. for life,* p. 793, *form* V., *remr to D.'s wife E.,* "if survivg," *for life,* p. 793, *form* VI., *remr to his first & other sons in tail genl,* p. 794, *form* XI.; *remr to his daurs, as tenants in common in tail genl,* p. 795, *form* XIV.; *remr to testor's daur F. for life witht anticipon,* p. 793, *form* VI.; *remr to her husbd G.,* "if survivg," *for life,* p. 793, *form* V.; *remr to F.'s first & other sons in tail genl,* p. 794; *remr to F.'s daurs, as tenants in common in tail genl,* p. 795; *Ulterior remrs to collaterals:* AND AS TO & concerng my sd estes & hds in the coy of Kent, & all the remr of the sd estes & hds hinbfe devised to the sd B. & C., other than my sd estes & hds in the coy of Sussex, subjt as to all such estes to the sd rent-chge, & the powers & remedies for securg the same, & subjt as to my Kent estes to the sd term of —— yrs, & the trusts thof, TO THE USE, &c., *to daur F. & her husbd successively for life, & her issue in tail, as above, remr to son D. & his wife successively for life, & his issue in tail, as above,* WITH REMR to such & the same uses, & upon such & the same trusts as are hinbfe decld & expd of & concerng my sd estes & hds in the coy of Sussex, to take effect after the sevl deces of my sd son & daur, & their respive wife & husbd, & the failure of issue of their respive bodies; *Provo cuttg down estes tail of psons born in testor's life,* p. 794; *Trusts of term to raise moy to pay debts,* "includg any mtge debts chged on any of the sd estes hinbfe devised in strict settlemt in exoneron of such estes thfrom," (*b*) *& legacies, in*

(*a*) As to the omission of the powers of distress and entry and term for securing the jointure, see Vol. I., p. 314, note.

As to settlement of two estates with different limitations.

(*b*) If the settlement of the Kent and Sussex estates effected by the will constitutes one settlement, capital money arising from one estate would be applicable under s. 21 of the S. L. A., 1882, in the discharge of incumbrances or improvements on the other estate, although in certain events the limitations branch out in different directions (*Re Freme,* [1894] 1 Ch. 1); and as the power of the tenant for life to direct such applications under s. 22 of *aid of psonal este*, p. 804, *addg bfe the final clause*, "AND UPON FURTHER TRUST, that the sd trees or tree shl, as soon as conveniently may be after the dece of my sd wife, by all or any of the means afsd raise such sum or sums of moy not exceedg in the whole the sum of £——, with intt for the same, at the rate of —— p.c. p.a. from her dece, as my sd wife shl by her will, or any codl thto, direct or appt, & shl pay & apply such sum or sums & intt to such pson or psons, & for such pposes as she my sd wife shl by her will, or any codl thto, appt or beque the same;" PROVD ALWAYS, & I hby declare, that as betn the psons who may become entled to my estes in the coy of Kent & the psons entled to the other estes chged with the sd rent-chge of £—— hinbfe limd to my sd wife (& so that this declon shl not affect the rts or remedies of my sd wife or her assns for the recovery of the sd rent-chge), my Kent estes shl be liable for the paymt of one eql third pt only of the sd rent-chge, & the costs & expses of raisg the same, & that the residue of my estes hinbfe chged thwith shl be liable for the paymt of the residue of the sd rent-chge, costs, & expses; PROVD ALWAYS & I declare that if the sd D. shl survive the sd E. it shl be lful for him, the sd D., &c., *Power to appt a jture to an after-taken wife*, p. 602, *form* XXXVI., *saying* "to be chgd upon all or any of the hds of which the sd D. shl be or become tenant for life under this my will, but subjt to the uses & estes precedg the life este of the sd D.," *Similar power to F. to appt a rent-chge to an after-taken husbd*, p. 603, *form* XXXVIII.; *Power to tenants for life other than D. & F. to chge jtures & rent-chges for husbds*, p. 805, *mutatis mutandis*, *saying*, "tenant for life of the sd premes hinbfe devised to the sd B. & C. or any pt thof," "to be chged upon the premes of wch the pson exercisg this psnt power shl be or become tenant for life;" *Power to tenants for life, includg D. & F., to chge portions*, p. 805, *with similar varions; add provos at* pp. 606, 607, *forms* XLI. & XLII., *confing the latter to the Sussex estes & addg a similar provo as to the remr of the estes; Power to trees to manage durg minorities*, p. 805,

Declaration as to incidence of rent-charge as between the several estates.

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the Act cannot be excluded or controlled by the settlement (see s. 51), it seems that the only way of preventing this result would be to declare that the settlements of the two estates shall be deemed to be separate and distinct settlements.

PREC. XXX.

mutatis mutandis, saying, "posson of the whole or any pt of the sd hds & premes," "rents & profits of the whole or such pt as afsd of the sd premes as the case may be," "as if the same had arisen from a sale of the whole or such pt as afsd of the sd premes as the case may be, &c.," *or the addon to the statutory power,* p. 805; *Provons as to cultivatg & stockg farms, &c.,* p 647, *forms* CI. *&* CII.; *Provon as to notices under S. L. Acts,* p. 817; [*Clauses havg referce to Acts as in Prec.* XXVIII., p. 883;] *Specific & genl legacies; Residy beqt of psonalty includg chattels real subjt to paymt of debts, &c., includg mtge debts, to son D. absolutely,* p. 728; *Clause apptg trees under S. L. Acts & as to a sole tree,* p. 818; *Apptmt of trees of compound settlemt,* p. 649, note (*d*), *form* A.; *& other usual clauses as in Prec.* XXVIII., p. 884. IN WITS, &c.

XXXI.

PREC. XXXI.

SHORT WILL EMBODYING *the* INSTRUCTIONS *for the Will,* WHERE *the Testator is* IN EXTREMIS, *and there is no time for the preparation of a formal Will* (*a*).

I, ——, of ——, declare this to be my last & only will; I GIVE all my real & psonal este to, *trees,* their hrs, exs, & ads, upon trust to carry out the follg instrons; AND I give to them or other the trees or tree of this my will the fullest & most absolute authority & discron as to the mode of doing so, includg power to exte & do all such settlemts, assurces, declarons of trust & other instrumts & acts as they or he may think expedient for that ppose, & also power to modify or depart from the sd instrons to any extent that may be deemed necy or desirable in order to carry out my genl intentions & wishes as thrin expd or to make the dispons conformable to law, & I appt the sd —— exs. *Copy of instrons.* AS WITS my hand this —— day of ——.

(*a*) It is hardly necessary to say that this device should not be had recourse to except in case of urgent necessity.

XXXII.

CODICIL SUBSTITUTING *an* EXECUTOR *and* TRUSTEE *for one Appointed by the Will and* ALTERING LEGACIES, *and incorporating provisions of the* CONVEYANCING ACT, 1881, *and the* TRUSTEE ACT, 1893, *in lieu of* LORD CRANWORTH'S ACT *of* 1860.

PREC. XXXII.

Commcemt, p. 682, *form* IV.; I HBY revoke the apptmt of K. as one of the exs & trees of my will; AND I revoke the legacy of £—— bequed by my sd will to the sd K. as an exor & tree thof, [but I hby confirm all other gifts made by my sd will & the prior codls thto to the sd K. beneflly]; AND I HBY appt M., of, &c., to be an exor & tree of my sd will in the place of the sd K.; AND I DECLARE that my sd will & former codls & all the devises, beqts, powers, & provons thrin contd, shl be construed & take effect in all respts as if the name of the sd M. had been origlly inserted thrin throughout in lieu of the name of the sd K. as an exor & tree thof [& devisee of copyhd estes vested in me as a tree or mtgee], & I beque the sum of £—— to the sd M., in case he proves my will & accepts the trusts thof; I HBY beque a legacy of £—— to N. in addon to the legacy of £—— given to him by my sd will, & I revoke the legacy of £—— thby given to P.; AND IN ALL other respts I confirm my sd will as altered by the sd former codls thto (*b*). IN WITS, &c.

Substitution of executor and trustee.

Alteration of legacies.

Confirmation of will.

Atteston, p. 828, *form* IV., *or* V.

XXXIII.

CODICIL *appointing an* ADDITIONAL TRUSTEE *and* EXECUTOR, *and* INCREASING ANNUITY *and trust* LEGACIES.

PREC. XXXIII.

Commcemt, p. 682, *form* IV.; I HBY APPT M., of, &c., to be an exor & tree of my will, to act jointly with K. & L., who are

Appointment of executor and trustee.

(*b*) See *Follett* v. *Pettman*, 23 Ch. D. 337.

PREC. XXXIII.

thby appted exs & trees, and I DECLARE that my sd will & the former codls thto shl be construed & take effect in all respts as if the names of the sd K., L., & M. had been origlly inserted thrin throughout in lieu of the names of the sd K. & L. as exs & trees thof, [& devisees of copyhd estes vested in me as a tree or mtgee]: AND I hby beque a legacy of £—— to the sd M. for his trouble; I DIRECT that the anny of £—— by my sd will bequed to my wife A. durg her life [widowhood] shl be increased to £——, & that such increased anny shl be payable at the like times & secd in like mner & be subjt in all respts to the like condons & provons as the sd anny of £——; AND I DECLARE that the legacy of £—— bequed by my sd will in trust for each of my daurs & her issue, or in trust for the issue of my daur dying in my lifetime shl be increased to £——, & that such respive increased legacies shl be held upon & subjt to all the trusts & provons contd in my sd will wch are applicable to the sd respive legacies of £—— each thby bequed in trust as afsd; *Confirmon of will*, p. 893. IN WITS, &c.

Bequest of increased annuity

and trust legacies.

XXXIV.

PREC. XXXIV.

CODICIL *giving share of* RESIDUE *to the* CHILDREN *of a* SON *who has* DIED, *in Substitution for their Parent, and* REVOKING *the* SHARE *given to* ANOTHER SON (*a*).

Substituted gift to children.

Commcemt, p. 682, *form* IV.; WHAS my son K. died on the —— day of ——, leavg —— chln: Now I HBY declare that such of the chln of my sd son K. as shl survive me & being male attn the age of 21 yrs, or being female attn that age or marry, shl take by substiton as tenants in common in eql shares, if more than one, the share in my residy este or the trust premes representg the same, wch the sd K. wd have taken had he survived me: AND I revoke the trust & beqt

Revocation of

(*a*) This codicil is adapted to the case where the gift to the son K. would fail by his death in the testator's lifetime, owing to his being comprised in a class, see p. 750, note (*a*).

contd in my sd will of a share in the sd residy este & premes in favour of my son L., AND I declare that my sd will (as hinbfe altered) shl operate & take effect in the same mner as if the sd L. had been excluded by my sd will from takg a share in the sd residy este & premes & the no. of shares into wch the same is divisible were reduced accdly. *Confirmon of will*, p. 893. IN WITS, &c.

PREC. XXXIV.

gift to another son (*b*).

XXXV.

PREC. XXXV.

CODICIL *directing that* SUM ADVANCED *to daughter on her marriage and* ADVANCES *made to a Son shall be* BROUGHT *into* ACCOUNT, *and Settling the* DAUGHTER'S SHARE *of Residue.*

Commcemt, p. 682, *form* IV.; WHAS, on the marre of my daur K., I transferred stks & secs wch I estimate to be of the aggregate value of £—— as her marre portion to the trees of her settlemt; NOW I HBY declare that such stks & secs shl be taken at the afsd value of £—— in or towards satisfon of the share in my residy trust este bequed by my sd will to the sd K., & shl be brought into hotchpot & accted for accdly; AND I FURTHER declare that the share by my sd will expd to be given to the sd K. in my residy trust este shl not be pd or transferred to or vest absolutely in her, but shl be retained by my trees & held upon the trusts & subjt to the powers & provons hinafter decld & contd concerng the same (that is to say), &c., *see Settlemt of chln's shares*, p. 758; AND WHAS, since the date of my sd will I have made advces to my son L., or for his benefit, amtg altogr to £——; NOW I DIRECT that

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(*b*) In revoking the gift of a share of residue, care should be taken (whether the gift was to the children as a class or *nominatim*), that the share is not left undisposed of, but is given to the other residuary legatees or by way of accretion to the other shares; a mere declaration that the child shall be excluded from sharing is not sufficient (*Sykes* v. *Sykes*, L. R. 3 Ch. 301; *Re Hodgkinson*, W. N. 1893, p. 9); possibly a declaration that the share shall fall into the residue may suffice (*Re Palmer*, [1893] 3 Ch. 369, overruling *Humble* v. *Shore*, 7 Hare, 247), but it is desirable to be very explicit; the proper form of provision must depend on the terms of the particular will.

PREC. XXXV.

such sum of £—— with intt thron from my death at the rate of —— p.c. p.a. shl be brought into acct in the way of hotchpot by my sd son in the divon of my residy este; *Confirmon of will*, p. 893. IN WITS, &c.

XXXVI.

PREC. XXXVI.

CODICIL *devising* FREEHOLDS CONTRACTED *to be* PURCHASED, *and directing that* PURCHASE-MONEY *shall be* PAID *out of* GENERAL *Estate* (*a*).

Commcemt, p. 682, *form* IV.; WHAS I have lately contracted to pchase from —— a freehd messe, lands, & hds, situate, &c., at the price of £——, of wch I have pd the sum of £—— by way of deposit; NOW I HBY DEVISE the sd messes, lands & premes to ——, his hrs & assns, for his & their absolute benefit [in addon to the disposons in his favour contd in my sd will]; AND IN the event of the pchase of the same not havg been completed in my lifetime, I direct that my exs shl pay to the sd ——, his hrs or assns, out of my genl psonal este, the sum of £——, being the balce remaing due of the sd pchase-moy with the intt, if any, & all costs & expses payable under the sd contract of pchase in order to enable him or them to complete the sd pchase; *Confirmon of will*, p. 893. IN WITS, &c.

XXXVII.

PREC. XXXVII.

CODICIL *providing for the case of* FREEHOLDS *or* LEASEHOLDS GIVEN SPECIFICALLY *by a Will* BEING SOLD *in the* TESTATOR'S LIFETIME.

Commcemt, p. 682, *form* IV.: I DECLARE that if I shl in my lifetime sell or agree to sell or orwise dispose of any of the

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(*a*) See also form XIV., p. 790, giving various powers as to pending contracts for purchase or sale. In the absence of a contrary intention being signified, a vendor's lien attaches in such a case, and the devisee takes the real estate charged with the unpaid purchase-money (*Re Cockcroft*, 24 Ch. D. 94).

PREC. XXXVII.

freehd & leasehd hds by my sd will specifically devised or bequed for the benefit of my wife & sons & their wives & chln or remoter issue, or if any of the same respive premes shl in my lifetime be taken for public or local improvemts or by railway or other companies, or orwise alienated or conveyed away so that the same premes or any pt thof cannot be held upon the trusts or for the pposes or devolve in the mner by my sd will decld or expressed concerng the same, then the trees of my sd will shl raise out of my residy este in respt of each portion of the sd premes wch may have been so sold, agrd to be sold, disposed of, taken, alienated, or orwise conveyed away a sum of moy eql to the amt reced as pchase-moy or compenson for or upon the sale, disposon, takg, alienon or conveyce of such portion of the sd premes; AND I DECLARE that the sum or sums so raised shl be held by the sd trees upon such trusts & subjt to such powers & provons upon & subjt to wch such sum or sums would have been held if the premes in respt whof the same shl be raised had upon my death become subjt to the trusts, powers & provons by my sd will decld & contd concerng them, & the same sums & sum of moy had been moy arisg from the sale of the same premes immedly after my death under the powers of sale in my sd will contd; PROVD ALSO & I declare that until the sum or sums so to be raised as afsd shl have been raised & invested, the same respive sum or sums, or so much thof as for the time being shl not have been actually raised & invested, shl carry interest at the rate of £3 p.c. p.a. from my death, wch intt shl be payable by my exs out of my este, & shl be applied & disposed of in the same mner as the income of the investmt representg the same sum or sums would have been applicable under this my will if the same had been raised & invested; *Confirmon of will*, p. 893. IN WITS, &c.

XXXVIII.

PREC. XXXVIII.

CODICIL *by a* WIDOW CONFIRMING *a Will made in her* HUSBAND'S LIFETIME UNDER *a* POWER, *which* CEASED *to be operative owing to his death* (*a*), *and bequeathing* JEWELRY, *&c., by reference to* SEPARATE *paper.*

Commcemt, p. 682, *form* IV.: WHAS since the date of my sd will & the former codls thto, my husbd —— has died, whby the power of apptmt contd in my marre settlemt & purportg to be exercised by my sd will & codls has become inoperative, & the ppty wch was the subjt of such power has become benefly vested in me absolutely; NOW I DIRECT that every disposon in my sd will & former codls wch operated by way of apptmt under the sd power thrin refd to, or was expd or intd so to do, shl operate & take effect as a disposon of or in respt of my benefl este & intt in the sd ppty purportg to be thby appted; AND I DEVISE & beque such ppty, & all my este & intt thrin accdly, so as to give effect to the disposons contd in my sd will & codls; AND I FURTHER DECLARE that the residy devise & beqt contd in my sd will shl comprise all the real & psonal este wch I am now able to dispose of, & wch wd have passed thby if my sd will had been now made; AND WHAS I am desirous of disposg of divers articles of jewelry, furniture, & other effects by reference to a septe paper or mem wch I have signed with my name & deposited with this codl for the ppose of identificon: NOW I HBY BEQUE the sevl articles & effects wch are specified in the paper or mem so deposited by me as afsd to the respive psons or legatees for whom such respive articles & effects are intd by me as expd in such paper

Gift of jewelry, &c., by reference to separate paper (*b*).

(*a*) See p. 871, note. The will will take effect by virtue of the M. W. P. A., 1893, s. 3 (see p. 871, note); but it is better to make a new will.

As to bequeathing chattels by reference to separate paper.

(*b*) A bequest made by reference to a separate paper will not be legally valid unless the paper is actually in existence at the time the bequest is made. The paper should be signed and deposited with the will to prevent doubt as to what document is intended to be referred to; and, although it need not be attested as a codicil, it will have to be incorporated with the will when proved; and it will be necessary to make a fresh codicil whenever the paper is altered. This mode of disposition is therefore very inconvenient, and there is always considerable risk of its miscarrying. A better plan is that of a precatory trust, as in form VI., p. 816; see the note to that form.

or mem; AND I DECLARE that all beqts hby made by referce to such septe paper or mem shl be free of duty, wch shl be pd out of my genl psonal este, & that all beqts so made in favour of females shl be for their respive septe use independently of any husband; AND I FURTHER DECLARE that any & every question wch may arise as to what articles are comprd in the respive beqts hby made by referce as afsd, or as to the mode of divon of any such articles or effects, or orwise in relon to any such beqt or to such paper or mem as afsd shl be determined by my exs, whose decision shl be final; AND I REVOKE the beqts & disposons contd in my will, so far as may be necy to give effect to the beqts hrin contd by referce as afsd, but not further or orwise; *Confirmon*, p. 893. IN WITS, &c. PREC. XXXVIII.

XXXIX.

CODICIL *correcting* CLERICAL ERRORS *in a* WILL (*c*).

PREC. XXXIX.

Commcemt, p. 682, *form* IV.; I DECLARE that my sd will shl be read & construed & take effect in all respts, 1st, as if the word "——" had been inserted after the word "——" in the —— line of the —— page thof; & 2ndly, as if the words "——" had been substituted for the words "——" in the —— line of the —— page thof; *Confirmon of will*, p. 893. IN WITS, &c.

XL.

CODICIL *by a* MAN *on his* SECOND MARRIAGE, *giving his* WIFE *an* ANNUITY, *and* CONFIRMING *a* WILL *made* BEFORE *and* REVOKED *by such* MARRIAGE.

PREC. XL.

Commcemt, p. 682, *form* IV.; *Beqt of anny to wife*, p. 720: AND IN all other respts I confirm my sd will, & direct that it shl operate as if I had re-exted it on this —— day of ——. IN WITS, &c.

(*c*) As to the confirmation by codicil of a will containing alterations, see *Tyler* v. *Merchant Taylors' Co.*, 15 P. D. 216.

XLI.

PREC. XLI.

REVOCATION *of a* WILL (*a*).

I, A., of, &c., hby revoke a will made by me bearg date, &c., & all other testy instrumts whatsr htofore made by me, & declare it to be my intention to die intestate. IN WITS whof I have hrunto set my hand this —— day of ——.

Signed by the above-named ——
in the presce of, &c., *rest of at-*
teston clause, p. 828, *form* IV.

XLII.

PREC. XLII.

WILL REVIVING *a Will and Codicils previously* REVOKED.

I, A., of, &c., declare this to be my last will: I HBY revive & confirm a will dated, &c., & two codls thto dated resply, &c., formerly made by me, wch sd will & codls I revoked on the —— day of ——. IN WITS, &c.

(*a*) Although a will may be revoked by cancelling, burning, &c., *animo revocandi* (1 Vict. c. 26, s. 20), it may sometimes be desirable to put the intention on record. The revocation should expressly extend to codicils, if any; see p. 682, note (*c*).

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the condition or proviso for reentry contained in such Lease then
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